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Current Topics.

Indian Judiciary and Legal Members of Council.

THE departure of Sir MAURICE GWYER to take up his duties as the first Chief Justice of the Federal Court of India, established under the provisions of the Government of India Act, 1935, begins a new chapter in the judicial and legal history of our great dependency in the East. Heretofore, there has been a High Court in each of the Provinces, each independent of the other, and the list of those who acted either as Chief Justice or puisnes in these tribunals included many distinguished members of the English Bar—such men as Sir EDWARD EAST, Sir WILLIAM OLDNALL RUSSELL, Sir EDWARD RYAN, Sir LAWRENCE PEEL, Sir BARNES PEACOCK, Sir DAVID POLLOCK and Sir RICHARD COUCH. Besides having had the advantage of the services of these men and others of equal calibre in the judicial sphere, India has likewise been fortunate in those who at various periods have acted as legal members of the Governor-General's Council. The first of these was MACAULAY, who, though his practice at the English Bar had been almost negligible, indeed, according to his own avowal, which, however, we need not take *au pied de la lettre*, his sole forensic effort was in prosecuting a boy for stealing a parcel of cocks and hens, must have imbibed much more law than was required for this feat, for in India he drafted a penal code for that country which one of his successors in the same office declared might well prove to be his most enduring monument. Among his successors in the post of legal member of the council were Sir HENRY MAINE and Sir FITZJAMES STEPHEN, each of whom well maintained the high standard set by their distinguished predecessor. While at Cambridge, both MAINE and STEPHEN were members of the Conversazione Society, popularly known as the "Apostles," a circumstance to which an amusing reference was made after both had returned from India. This was at a dinner of the Society, with MAINE in the chair, when STEPHEN, in proposing their chairman's health, suggested that the legislation passed in India during the rule of MAINE and himself should henceforth be called the "Acts of the Apostles."

Mortgagees' Costs.

THE *Law Society's Gazette* for September refers to a complaint recently received by the council of The Law Society with reference to the method of awarding costs to a mortgagee's solicitor under the practice directions issued on 22nd April last. The matter arose out of a writ issued by a mortgagee's solicitors in the Chancery Division claiming the balance of money due under a mortgage after sale of the property by the mortgagee. The defendant did not enter an appearance, but, in order to comply with the aforesaid directions, the solicitors, instead of signing judgment in default of appearance, had to take out a summons for leave to sign judgment in the same way as they would have done in proceedings under Ord. XIV in the King's Bench Division if the defendant had appeared. The master made the order asked for, but proposed to award the plaintiff's costs upon the scale fixed for judgment in default of appearance. The solicitors in their communication to the council complained that the proceedings had entailed exactly the same work as would have been necessary to obtain judgment under Ord. XIV, and submitted that the higher scale fixed for judgment under that order applied. In response to a letter from the council, CLAUSON, J., pointed out that the effect of adopting the King's Bench fixed scale of costs was that the defendant was burdened as a matter of personal liability with no heavier costs by reason of the new procedure than he was burdened with before. It was true, the learned judge intimated, that the plaintiff's solicitor incurred somewhat heavier expense in obtaining the order in default of appearance than he was put to under the old procedure, but the plaintiff's solicitor was free to charge against his client, subject in due course to taxation or moderation, the proper remuneration (as between solicitor and client) for his work, and the client, as mortgagee, would be entitled, as part of his mortgagee's costs, charges and expenses, to credit for that sum as against proceeds of sale or on taking the mortgage account. Our contemporary to whom we desire to express out indebtedness for the foregoing information, concludes: "It appears that the point was raised several times when the existing practice was first put into force, and it has been recognised that the matter, as explained above, works out with ultimate fairness to all parties."

The Drunken Motorist.

WITH reference to the series of articles in the September issue of *The Practitioner*, which have been considered during the past few weeks in these columns, mention may finally be made of the informative article by Dr. ALEXANDER BALDIE, honorary psychotherapist, West End Hospital for Nervous Diseases, Divisional Surgeon, Metropolitan Police. The writer states that during 1936, 666 persons were proceeded against

in the Metropolitan Police Area on account of being medically certified to be under the influence of drink or drugs to such an extent as to be incapable of proper control of a motor vehicle (see Road Traffic Act, 1930, s. 15 (1)), that in 1934, 2,016 motorists in Great Britain were medically certified to be incapably under the influence of drink, and that in 1933 there were 1,595 convictions for driving under the influence of drink. Having indicated the extent of the evil, Dr. BALDIE deals with the effects of alcohol with reference to driving efficiency and suggests that some 30 per cent. of those charged with driving whilst under the influence of drink may be described as "accidental" cases or "persons who either do not habitually drink, or who do not usually drink when driving," but who "find themselves caught up in a circumstantial network of celebration, indulgence and fatigue." He recommends avoidance of alcohol for at least two hours before driving (the period being strictly applicable only to the most modest and conventional amounts) on long journeys, on any journey taken alone, when fatigued, "out of sorts," or ill, and under abnormal or difficult conditions calling specially for the exercise of judgment and technical efficiency. He deprecates the selection of an alcoholic beverage merely to relieve thirst, the drinking of such without meals, "mixing," and the speeding of the parting guest, who has been already well entertained and who has to drive home, with further refreshment. Moreover, "on any occasion on which the use of alcohol is a contemplated ritual," the motorist is urged to "leave the car at home." As to legal penalties, Dr. BALDIE suggests that only prolonged or permanent suspension of licence may sufficiently protect either the public or the offender in cases of the chronic alcoholic or the reckless or deliberate (and intemperate) joy-rider. With the "accidental" case of a normally respectable and abstemious person "who, returning home from an occasional celebration or reunion, is unconsciously overcome, and finds himself the victim of circumstances and of his own indiscretion" greater hope is expressed of the value of a deterrent penalty. In such cases, it is urged, suspension of licence may constitute an unnecessary hardship, and, should it involve loss of employment, even a public disadvantage. Experience of many such cases, the writer states, suggests that the mere shock of arrest is in itself a sufficient deterrent from any repetition of the offence.

The Public Health Act, 1936.

READERS should be reminded that the Public Health Act, 1936, comes into operation on 1st October. The various provisions of the new statute have received considerable attention in our columns, and it is unnecessary to add further particulars here. But it may be recalled that the measure is chiefly of a consolidating nature, and deals with matters of a strictly public health character and is not concerned with a number of subjects which in the course of time have come to be associated therewith. Perhaps the most important of the changes effected is the general levelling up of the powers conferred upon rural and urban authorities alike. In the past the Legislature has not unnaturally been concerned principally with the latter, but the growing importance of the former as public health units has been increasingly recognised and the new statute gives effect to this tendency. The subject of overcrowding once associated with the duties of sanitary inspectors is no longer dealt with as a public health question. Such would, of course, have involved an unnecessary duplication in view of its comprehensive treatment in the Housing Act, 1935, now incorporated into the Housing Act, 1936. It will not, perhaps, be out of place at this juncture to pay a passing tribute to the promoters of the Public Health Act, 1875, which has so long remained the basis of public health legislation. It would be difficult, perhaps impossible, to find another statute on a branch of legislation involving such detailed treatment which was not required to be repealed before the expiration of a period of more than sixty years.

New Motor Law: October.

BRIEF reference may be made to a couple of provisions of motor car law which come into operation at the beginning of October. We have recently alluded to each of these (81 SOL. J. 706, 658) and the present paragraph must be regarded merely as a reminder. First, the new Motor Vehicles (Construction and Use) Regulations require mechanically propelled vehicles registered for the first time on or after 1st October, with certain exceptions, such as invalid carriages, to be fitted with a contrivance, not necessarily a speedometer, to inform the driver within a reasonable degree of accuracy when he is exceeding the speed limit in a built-up area or the limit applicable to the particular class of vehicle he is driving. Secondly, from the 3rd October, headlights over a certain capacity are required to be fitted with an anti-dazzle device. The Ministry of Transport recently published a reminder of the coming into effect of the anti-dazzle regulations which have now been published for some time, and therefore there will be little excuse for non-compliance, but, as was the case when non-splinterable glass became compulsory for all cars irrespective of date, it is not improbable that the new regulations will take many motorists unawares.

Rules and Orders: Trunk Roads.

BRIEF reference may be made to the Trunk Roads (Built-up Areas) (No. 4) Order, 1937-(S.R. & O. 1937, No. 774), which was made by the Minister of Transport on 18th August, as indicative of the machinery whereby sections of trunk roads are now brought within the description of "built-up areas," within the meaning of s. 1 of the Road Traffic Act, 1934. The order is to the effect that the Minister under and by virtue of the powers conferred on him by sub-s. (4) of the above section, as amended by s. 3 (2) of and Pt. I of the Third Schedule to the Trunk Roads Act, 1936, orders and directs that every length of road specified in the schedules to the order—the roads concerned in the present order are A 1, A 59 and A 40—shall be deemed to be a road in a built-up area for the purposes of s. 1 of the Act of 1934. The order is published by H.M. Stationery Office, price 1d. net.

Rules and Orders: Draft Contributory Pensions Regulations.

THE attention of readers may be drawn to the draft of regulations proposed to be made by the National Health Insurance Joint Committee and the Minister of Health under the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 and 1937. Copies of the regulations, to be known as the Contributory Pensions (References) Regulations, 1937, are obtainable from H.M. Stationery Office (price 2d. net). They revoke the Contributory Pensions (References) Regulations of 1928 and 1931, provide for the appointment by the Joint Committee of a panel of referees, being barristers-at-law or solicitors, for the purpose of dealing with references under the above-named Acts and prescribe the requisite procedure.

The Law Society's Provincial Meeting.

THE Fifty-third Provincial Meeting of The Law Society is to be held at the Barnfield Hall, Barnfield, Exeter, on Tuesday and Wednesday, the 28th and 29th of this month, and the course of procedure to be adopted at this meeting, as settled by the Council of The Law Society, appeared at p. 751 of last week's issue. A full report of the proceedings, together with the various papers read at the meeting, will be published in successive issues of THE SOLICITORS' JOURNAL, commencing with the special Law Society Number of the 2nd October. That issue will also contain a photogravure portrait of the President of The Law Society, Mr. FRANCIS EDWARD JAMES SMITH.

Criminal Law and Practice.

CAR WASHING A CRIME?

In a recent prosecution at Grays Petty Sessions (*South Essex Waterworks Co.* v. *Smith, The Times*, 11th September, 1937) a summons for using domestic water supply for other than domestic purposes was dismissed on the ground that car washing came within the term "domestic use." The summons was taken out under the Waterworks Clauses Act, 1863, s. 18 of which makes it an offence to use water without authority for other than domestic purposes. Section 12 provides that a supply of water for domestic purposes shall not include (*inter alia*) a supply of water for washing carriages where such carriages are kept for sale or hire by a common carrier.

There has been a considerable amount of judicial interpretation of the phrase "domestic purposes." In *Busby* v. *Chesterfield Waterworks and Gas Co.*, E.B. & E. 176, it was held, under a local Act, that water used for washing a horse and carriage kept for private use on the premises was applied to domestic use. In *Harrogate Corporation* v. *Mackey* [1907] 2 K.B. 611, it was held that even when water is supplied to a medical man for washing a motor car which was used for the purposes of his profession it was applied to domestic use. Lord Alverstone said, in that case, that he did not understand "why it should be suggested that a medical man's carriage is not used for domestic purposes when a judge's or a stockbroker's carriage is so used." He also pointed out that if the Legislature had intended to alter the decision in *Busby's Case* they would have done so by adding a further exception to those already contained in s. 12 of the 1863 Act.

Vaughan Williams, L.J., in *Barnard Castle U.D.C.* v. *Watson* [1902] 2 Ch. 746, defined the phrase as *primâ facie* meaning "the use of water for the more convenient occupation of a house or for increasing its amenities to the owner or occupier." In that case it was held that some regard must be had to what is a reasonable supply of water from the point of view of quantity. It was also held that the use of water for the purpose of a swimming bath in a boys' school was not a domestic purpose.

In some cases it is necessary to take care to separate the two questions of reasonable quantity and domestic purpose. In accordance with the authority of the *Barnard Castle Case* it would be doubtful whether the amount of water used for washing twenty pleasure carriages would be a reasonable amount so as to constitute the purpose domestic, although its use for washing one car is domestic. On the other hand, as Lord Alverstone, C.J., said in *Cambridge University and Town Waterworks Company* v. *Hancock*, 74 J.P. 474, at p. 479: "I have never before heard it suggested in any case that I can remember that what is in effect a trade purpose can be held to be a domestic purpose because either the company have not charged under some circumstances, or something has happened which would justify the user in saying that the use is very small or only casual." The water was used in that case to wash a dairyman's yard and milk float.

On the other hand, a purpose may well be domestic in spite of the fact that the premises on which it occurs are business premises. For instance, it has been held that a boiler used to heat business premises where the owner does not reside, and to supply warm water for a resident caretaker's household purposes as well as for cleaning purposes came within the words "used exclusively for domestic purposes" in the Boilers Explosions Act, 1882 (*Smith* v. *Miller* [1894] 1 Q.B. 192).

The special Acts with regard to the supply of water necessarily vary from place to place, and the Waterworks Clauses Act, 1863, applies only to waterworks where the special Act incorporates the 1863 Act. Under the Metropolitan Water Board (Charges) Act, 1907, the object of which is stated in the preamble to be the standardising of scales of charges, the washing of carriages and the watering of gardens are among other purposes excluded from the meaning of "domestic purposes." Section 62 of the South Essex Waterworks Company's Act of 1928 authorises a charge to be made where water supplied for domestic purposes is used for washing motor cars by hosepipe, such charge to be in addition to the rates authorised for domestic purposes, and recoverable in all respects in the same manner as the rates for domestic purposes.

In connection with prosecutions of this nature it should not be forgotten that s. 19 of the Waterworks Clauses Act, 1863, makes it an offence to "affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertaker or to a communication or service pipe . . . without the consent of the undertakers." The section lays down a maximum penalty of £5 for every such offence, without prejudice to the right of the undertakers to recover the value of any water wasted or unduly consumed. It has been held to be an offence under this section even temporarily to affix a hosepipe to a tap to draw off water: *Cambridge Waterworks Co.* v. *Hancock*, *supra*. It follows, therefore, that facts which would not constitute an offence against s. 18 may well constitute an offence against s. 19 of the 1863 Act.

Lord Peter Wimsey and the Administration of Estates Act, 1925.

[Contributed.]

There are two ways of reading a detective story. One is to read it intelligently; to watch for the clues that are going to be woven together by the sleuth in the last chapter and to try to anticipate his conclusions. The other is to read it unintelligently, as I do: then the dénouement is always a complete surprise. I am sure that mine is the more amusing method.

But however unintelligently one reads, one preserves just a glimmer of the critical faculty, and almost involuntarily notices such major inaccuracies as come within the limits of one's knowledge. Not that I regard reading a detective story as a "busman's holiday" in any sense. In these works "the law" means a police-constable, and he represents a kind of law about which I know nothing, save for one unfortunate instance when I left my car unattended for too long. I am told by those who know that the trial scenes and inquests in detective stories bristle with violations of the rules of evidence and procedure. If they do, I never notice it: I have seldom been inside a criminal court, and have never seen a coroner go into action. Besides, in the Chancery Division, things quite as bad happen every day. As a very learned friend once said to me in a pained way when a judge was taking a technicality about the right to the last word, "I always understood that the Chancery rule was that if anyone wanted to say anything he might say it." And where should we be without affidavits of information and belief?

I can therefore swallow down most of the legal stuff in detective stories as innocently as any layman. But sometimes there comes a howler that one really cannot miss. After all, the writer has to provide a motive, and there are really only two practicable classes of motive for murder. Since one of these is the lust of gain, it is not a very long step to the subtle beauties of our law of property in general, and to the law of succession upon death in particular.

I suppose that I must have been unlucky, but I have certainly struck a bad patch lately. Not that the books to which I am about to refer are particularly new, but they happen to be the ones that I have recently found in the

local library or in the sixpenny editions. But the fact is that no less than four of the detective stories I have read lately contain really rather shocking blunders of property law. Incidentally, I may as well point out, for what it is worth, that three of the four culprits are ladies.

First, there is Agatha Christie. In her "Murder in the Blue Train" the deceased lady is beneficially entitled to a matter of two million pounds. She is married, childless, and intestate. Her husband is on indifferent terms with her, and is in financial straits. He is at once put into the category of possible suspects by some of the sleuths, on the ground that he would get the two millions, and that they would be useful to him. Without giving the real story away, I may say that this was not the motive of the crime. But the point is that everyone concerned seems to think it a plausible suggestion. However, I do not rate this mistake as a very serious one, because after all, what with the personal chattels, £1,000 with 5 per cent. interest, and a life interest in the whole of what is left of the two millions after satisfying these claims and those of Somerset House, there is still a reasonably adequate motive.

Similarly, I do not take a very grave view of the mistake in Alice Campbell's "Murder of Caroline Bundy," since nothing much turns on it. Here, two of the characters are left the deceased's residue between them absolutely, accompanied by a letter giving directions as to how part of it is to be spent. The writer treats the letter as creating a valid secret trust, though neither the fact of the legacy nor the existence of the letter were communicated by the testatrix to the beneficiaries in her lifetime. As a matter of fact, it turns out that one of them did know all about both points, since she was wedged under the nearest sofa listening while the testatrix gave instructions to her solicitor for the will. This would, incidentally, raise a point of some difficulty. Would such knowledge bind the conscience of the legatee or not? However, we need not go into that here. The point is that at all critical stages of the story it appears that the testatrix had carefully seen to it that the legatees knew nothing; and yet the trust in the letter is considered as binding. However, nothing much turns in the end on whether the legatees got the legacy incumbered with the trust or not, and therefore the offence is not very heinous.

A much more serious case is that of Douglas Browne's "The 'Looking-Glass' Murders," where the whole motive of the crime is supplied by the limitations of the will of a testatrix who died in 1888 or thereabouts. These limitations admittedly raise some difficult points of construction, since the will was home-made. The author treats them as creating an entailed interest: they look to me more like a perpetual series of life-interests. However, if I am right, the limitations were bad for perpetuity at a point long before they could have the least effect on the story. If the author is right, the motive for the crime was lacking for two reasons. First, the property in question was personalty, in which no entail could be created at all in 1888 or for a long time thereafter; and secondly, the person who commits the crime in order to get the alleged benefit of the bequest is a collateral and not a lineal descendant, and therefore would never have got the property if there could have been an entail of it. This book also contains a charming scene in the office of a solicitor, "a musty little room lined with japanned deed-boxes, and the numerous volumes of Blackstone, Forms and Precedents, and the Rules of the High Court." I wish Blackstone's volumes were numerous, as he is extremely good reading, but as a practising solicitor's library the selection mentioned would be a little deficient.

But the really shocking case is Dorothy Sayers' "Unnatural Death." The other three cases I have mentioned are relatively venial, since in two of them nothing much turns on the mistake, and in the third the author simply has a wrong idea of the effect of the will, without arguing about it. But Miss Sayers' great point is that she always explains her technicalities. What, for example, could be more illuminating than her excursus on the polariscope in "The Documents in the Case," or many other of her expositions? I am told, by the way, that all she says about the polariscope is true.

Pursuing this method, Miss Sayers launches into several pages of legal argument in "Unnatural Death." And that is the trouble. The point of the story is this. At the end of 1925 an old lady dies, intestate, a spinster, without parent. All her brothers and sisters have predeceased her, and only one of them has left issue. That one had a child, but the child has also predeceased, leaving a daughter. This daughter is the great-niece of the intestate, and is quite obviously her only near relative. Now, it is made clear quite early on that the great-niece has done the murder, and the story's two points are to explain why and how. It is also made clear that the old lady was subject to a psychological objection, amounting to an obsession, against the idea of ever making a will. She was certainly going to die intestate anyhow, and moreover she was, according to her doctor, not likely to live more than six months, though it was virtually certain she would last about as long as that. On the contrary, she dies almost at once after the doctor has reached this conclusion. Now, why on earth should the great-niece murder her? She is obviously the old lady's heir-at-law, and her sole statutory next-of-kin, both under the old law and the new. The whole property would fall into her lap in the course of nature at no distant date. I confess I was baffled when the foregoing facts had been elicited.

Not so Lord Peter Wimsey, nor his family solicitor, nor the eminent Chancery practitioner whom they consult. The noble lord recollects the new "Property Act." What is the position under it? Would the great-niece still have got all the property if the old lady had lived on into 1926, as the doctor expected? After the solicitor has given vent to a good deal of learning and some doubts, they hurry off to counsel. To my intense astonishment, counsel informs them that: "Your great-niece hasn't a leg to stand on" under the new law. If so, of course, the motive is clear. Counsel's point is that the statute says that in the absence of nearer relatives the estate goes to, "the brothers and sisters of the whole blood and their issue." (Actually, as we shall see, it says something quite different.) He then explains that in this context "issue" can only mean children, and must exclude remoter issue; hence, since the great niece is a grandchild of the sister of the deceased, she would be excluded. This singular conclusion rests upon some amazingly misconceived references to the rules of construction and the Wills Act, into which we need not enter.

After further sleuthing, it appears that the great-niece had for some reason unknown had the same idea herself, and had been advised by a solicitor and counsel that the point was at best one of grave doubt. She had therefore arranged to be on the safe side, and had hustled the unfortunate old lady out of the world before the exciting instant at which the 1925 property legislation came into force.

Now, what I should like to know is, not where Miss Sayers got the idea (for anyone might get it), but how she ever imagined there was anything in it, especially after having made the researches which we all believe she does make. Her point is, of course, completely wrong, and cannot survive a moment's inspection of the Administration of Estates Act. No lawyer, after looking at the Act, could possibly say "your great-niece hasn't a leg to stand on," and I cannot imagine him committing even the lesser error of advising that there is a serious doubt about her position. She is perfectly safe. By s. 46 (1) (v), the property goes, in the absence of nearer relatives, "*on the statutory trusts* for the brothers and sisters of the whole blood of the intestate." By s. 47 (3), incorporating s. 47 (1) (i), the statutory trusts include a provision that if the primary beneficiary (in this case the intestate's sister)

predeceases the intestate, the issue of such primary beneficiary are to come in instead, "such issue to take *through all degrees* according to their stocks, in equal shares, if more than one." Unless "issue" means "issue" and not "children," this last provision is pure nonsense: it contemplates, and can only contemplate, the substitution of issue in any degree. Therefore, the advice given to Lord Peter and to the murderess was hideously and irretrievably wrong: indeed, so wrong that it could never have been given.

What really distresses me about "Unnatural Death" is that the point of law is not just stated, but is argued as a point of law, and in circumstances which suggest that Miss Sayers has given it as much attention as she usually gives to her points of science. The truth is that I have lost another idol. Never again can I swallow down Miss Sayers' learning in the old trustful way. I shall always be thinking "Is this bit of information like the one about the polariscope (which I believe to be right), or like the one about the great-niece (which I know to be wrong)?" And that is very sad indeed.

But I do think that in tapping the vein of motives connected with the changes in the law of property Miss Sayers has done a great service. The theme is a little old now, but, after all, period pieces have their charm. I present one or two other ideas on the same lines. An heir-at-law might kill his old aunt prior to the triumph of the next-of-kin on the 1st January, 1926: then it could turn out that the crime was needless, as he had forgotten to mention to his solicitor that, as well as being intestate, she was a lunatic, and so within s. 51 (2) of the Administration of Estates Act. Or a residuary devisee under the will of a person possessed of a large and valuable undivided share in land might intelligently anticipate the decision in *Re Kempthorne*, and kill off the testator prior to 1926 to save the proceeds of sale (under the statutory trusts) from the clutches of the residuary legatee. Or a widowed mother of a child entitled to an equitable fee simple under a settlement of land might kill the child, after 1925, in order to take the equitable fee as next-of-kin. She would find, when it was too late, that the fee has become an entailed interest under s. 51 (3) of the Act. My ideas, it will be observed, are very moral: in each case the murderer tries to be clever, and the property law is too clever for him. I do not think it is worth pursuing the subject further save to observe that if and when the Law of Property Amendment Act, threatened for about now in the Preface to the 1932 "Wolstenholme," comes into being, detective novelists should at once consult their solicitors. It is sure to be full of juicy, up-to-date motives for murder.

Company Law and Practice.

The effect of a Scheme of Arrangement on a Joint Debt.

A SHORT but interesting point recently arose for decision in the case of *Re Garner Motors Limited*, 157 L.T. 258. Shortly stated, the question for determination was whether the discharge of one joint debtor by means of a scheme of arrangement under s. 153 of the Companies Act, 1929, operated to release the other joint debtor from his liability. The facts were simple and can be summarised quite shortly. The creditors were the owners of a newspaper which contained advertisements put in by the S company and the G company. An agreement was entered into by the newspaper proprietors and the two companies by which the two companies reserved a certain number of pages in the newspaper for the advertisement of their goods. The two companies became jointly liable to pay for the space reserved by the agreement. Advertisements were inserted and payments were made, but a balance of £380 odd remained owing to the newspaper proprietors when the S company got into difficulties and was obliged to have recourse to s. 153 of the Companies Act, 1929. A scheme was duly prepared and sanctioned by the court in the usual way. This scheme provided for certain payments to the creditors in cash and in income notes and the creditors became bound to accept the provisions contained in the scheme "in full satisfaction and discharge of their claims against the present company [i.e. the S company] and the assets thereof." The newspaper proprietors received what was coming to them under the scheme, but they did not intend to accept this dividend in satisfaction also of the further claim which they had against the G company as joint debtors.

The next thing that happened was that the G company went into voluntary liquidation and the newspaper proprietors thereupon sought to prove for their debt. The liquidators of the G company rejected the proof, alleging as their reason for doing so that the scheme of arrangement entered into between the S company and its creditors had released the G company from its liability. The newspaper proprietors then took out a summons to have the decision of the liquidators of the G company reversed.

Crossman, J., stated the general law in these words: "It is settled law that accord and satisfaction between a creditor and one of several debtors who are jointly or jointly and severally liable to the creditor, discharges the other debtors, unless it appears from the terms of the agreement or the surrounding circumstances that the creditor intended to reserve his rights against them." Pausing here for a moment, it may be observed that in the present case the newspaper proprietors had intended to reserve their rights against the G company when they agreed to be bound by the scheme of arrangement put forward by the S company. They had signed a receipt in the following form: "Received . . . on account of the joint indebtedness to us of [the S company and the G company] in the sum of £379 5s. 10d." But this point was not material as the learned judge held that if the discharge of the one joint debtor is brought about by operation of law this does not operate as a discharge of the other joint debtors. The question then arose of what precisely is the effect of s. 153 of the Companies Act, 1929. "In my judgment the effect of s. 153 of the Companies Act, 1929, is to give to a scheme when sanctioned by the court under the section a statutory operation. The scheme when sanctioned by the court becomes something quite different from a mere agreement signed by the parties, it becomes a statutory scheme . . . In my judgment, therefore, the discharge of [the S company] from its debt . . . which was effected under the scheme sanctioned by the court . . . did not have the effect of discharging [the G company] from its liability in respect of the debt."

Misfeasance Summons—Application for Relief under s. 372 of the Companies Act, 1929.

Another recent case which calls for a short review is *Re J. Franklin and Son Ltd.*, 157 L.T. 188. This was an application by the liquidator of the company under s. 276 of the Companies Act, 1929, for a declaration that the directors of the company were jointly and severally liable to contribute to the assets of the company a sum of money as compensation for their misfeasance in paying to one of their number remuneration which had not been duly authorised in accordance with the company's articles of association. The directors contended in the first place that the payments had been properly authorised by a resolution of the company, and secondly, that if this were not so, they were entitled to relief under s. 372 of the Companies Act, 1929. I do not propose to go into the first point, which depended solely on the question whether one of the persons present at the meeting which purported to authorise the payments in question was or was not at that time a member of the company. Suffice it to say

that, although he was the executor of a deceased shareholder, the learned judge found that he was never himself registered as the holder in the place of his testator and was not a member. In consequence there was no quorum at the meeting, the resolution passed thereat was invalid, and the payments made in pursuance of that resolution were also invalid. That being so the directors were liable to refund to the company the sums which had been invalidly paid out of its assets.

The second point then arose as to whether s. 372 of the Companies Act, 1929, applied. This section provides as follows :—

" (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that court may relieve him either wholly or partly from his liability on such terms as the court may think fit.

* * * * *

" (4) The persons to whom this section applies are the following :—

" (a) directors of a company . . ."

The judgment of Crossman, J., in the present case provides an important explanation of the working of this section. Three things have to occur before the power of relief given by the section becomes exercisable by the court. " First of all, the director must have acted honestly ; secondly, he must have acted reasonably ; and thirdly, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused." The judgment then goes on to examine and explain each of these three essential constituents separately. In the first place, what is the meaning of the word " honestly " in this context ? Crossman, J., interpreted the word " dishonestly " as meaning without any direct motive. If the directors had paid the remuneration recklessly without considering the interests of the company at all, they might well be said to have acted dishonestly. Then came the second consideration : did they act reasonably ? In this connection the learned judge found that it might have been reasonable for the directors " to have arrived at the conclusion or to have believed that he was a member of the company, and that, therefore, the resolution was properly passed. If the resolution was properly passed they were justified in paying, and if there was nothing more in the case and it was a purely technical defect in a perfectly proper transaction, I think I could come to the conclusion, not only that the parties had acted honestly and reasonably, but that, having regard to all the circumstances, they ought fairly to be excused, but I am bound, having regard to the section, to consider the third thing, namely, whether, having regard to all the circumstances of the case, including those connected with their appointment, the directors ought fairly to be excused." This third and last consideration is the most difficult to apply, inasmuch as it is of greater latitude than either of the other two, and in the case now under consideration it proved fatal to the contentions of the directors, who were held not to be entitled to the benefit of the section. The question must finally depend on the facts which are revealed by the evidence, and the details of one case do not greatly assist in deciding on the merits of another. The court, it is clear, may find that persons have acted honestly and reasonably, but it may at the same time not feel disposed to grant relief from the negligence, default, breach of duty or breach of trust which has come to light. It will then be open to it to hold that in the circumstances of the case the delinquents ought not fairly to be excused.

A Conveyancer's Diary.

[Contributed.]

Public Rights of Way.—II.

Having disposed of the main question of principle in s. 1 (1) and (2), the Rights of Way Act proceeds to its ancillary provisions. Sub-sections (3) and (4) of s. 1 take up the question of what is " sufficient evidence " of an intention not to dedicate. It is essential that this expression should be explained if we are to understand sub-ss. (1) and (2).

By sub-s. (3) it is provided that in the absence of proof to the contrary it shall be sufficient evidence of an intention not to dedicate, to show that notices have been put up on the land denying the public's right. If such a notice is torn down or defaced, it will be enough to give written notice to the same effect to the county council and to the relevant local council. Where the public are in process of acquiring a right, the landowner should hasten to avail himself of sub-s (3).

Notices under sub-s. (3) are not merely " sufficient evidence" of an intention not to dedicate. By sub-s. (6) they call the right in question and stop time running.

But the evidence of putting up the notice is only " sufficient" in the absence of proof to the contrary. Once the putting up of the notice is proved, the onus is shifted back to the person asserting the right. In this connection it may be noted that Bennett, J., has recently decided (on A.E.A., s. 36 (7)) that " sufficient " evidence is not the same thing as " conclusive " evidence : *Re Duce and Boot's Contract* [1937] W.N. 310.

At this point it is also to be noted that sub-s. (5) enables a lessor to place and maintain notices on the land during the term of the lease. If that were not so, he might be unable to rebut the presumption in the case of user for forty years, even though the land was in lease throughout the period.

Sub-section (4) (*a*) allows an owner to deposit with the county council and the relevant local council large scale maps marking his land, accompanied by statements indicating what ways he admits to be highways.

Sub-section (4) (*b*) provides that where such maps and statements have been deposited, certain statutory declarations by the owner for the time being are to be sufficient evidence of no intention to dedicate. To qualify as sufficient evidence, a statutory declaration must be one lodged within six years of the deposit of the map, or six years of the lodgment of the last previous declaration, and stating that no ways additional to those already admitted on the deposit of the map or by previous statutory declarations have been dedicated other than those new ways admitted by the new statutory declaration to have been dedicated.

The point seems to be this. In order to guard himself, an owner should deposit a map and statement, and at intervals of about five years should lodge statutory declarations stating what new ways he admits having dedicated, and that those are all. In the absence of proof to the contrary, these statutory declarations are " sufficient evidence " if put in at a later trial that there was no intention to dedicate any other ways.

By sub-s. (6) the periods of twenty and forty years are to be those next before the time when the right was brought in question by a notice or otherwise. This provision differs materially from the corresponding provision in s. 4 of the Prescription Act. By that section, it is provided that the periods of years are to be taken as those " next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question." The words " or otherwise " in the Rights of Way Act seem to import the same meaning as is conveyed by s. 4 of the Prescription Act. But under the Rights of Way Act time can be stopped from running much more simply than by starting an action. It is enough to put up a notice under sub-s. (3).

Sub-section (7) provides that nothing in s. 1 is to affect any incapacity of bodies, corporate or otherwise, who are in possession of land for public or statutory purposes, to dedicate ways. No public body can dedicate a way over its land which is inconsistent with the objects for which the body exists. There is a good deal of case law on this subject, but the most obvious example is that a railway company cannot dedicate a highway along its track. If the case is one where the court would hold at common law that no presumption of dedication can be drawn from long user because the owner is a corporation, with whose objects the alleged dedication would be inconsistent, it will not avail the public to prove a twenty- or forty-year user.

Sub-section (8) provides, rather obviously, that the word "land" in the Act is to include land covered with water. Why this express provision was necessary is obscure, since it is well known that water is land by the law of England. It is, of course, quite possible to have a highway over water.

Section 2 is a "Savings" clause. Nothing in the Act is to affect pending proceedings, and where there has already been a declaration by the court of rights, nothing in the Act is to affect any enjoyment save enjoyment subsequent to the declaration.

Section 4, in effect, gives the action of trespass, in cases where it is sought to prevent the public acquiring a right of way, to the immediate reversioner upon a tenancy for life or *pur autre vie*. Since trespass at common law is a tort to possession, a reversioner could not have an action of trespass. He was permitted only the action of case to restrain or indemnify him for permanent damage to his reversion. This disability is now somewhat modified. It is to be observed that this concession is not extended to the other sort of reversioner (namely, a lessor). He must seek protection by putting up notices under sub-ss. (3) and (5).

Section 3 is an important provision. Before the Act there used to be some rather complicated rules as to what documents might or might not be tendered in evidence in right of way cases. All this learning is now swept away in all cases where the question is whether dedication has taken place, and, if so, at what date. As dedication is a term of art referring to the creation of public rights of way, the provision does not in any way affect the mode of proving easements. But on the other hand it is not limited to cases where the Rights of Way Act, 1932, is invoked. The old procedure is, of course, still available, and indeed is expressly confirmed by sub-s. (2) of s. 2, which provides that nothing in the Act is to operate to prevent dedication from being presumed from user of less than twenty years, or from being proved or presumed in any case where it could have been so proved or presumed apart from the Act. Section 3, then, allows the production in evidence in any case affecting the dedication of a public right of way of any map, plan, or history of the locality or other relevant document (this last expression is quite general). Any such document is to be given as much weight as the tribunal thinks it deserves, having regard to its antiquity, the status of its maker or compiler, the purpose for which it was made and the custody from which it is produced. In order to give effect to these various considerations the court will presumably have to receive evidence other than the document itself. How otherwise is it to know the status of Mr. A, who compiled a history of Blankshire in 1750, or of Mr. B, the compiler of a map of the parish of Dale in 1600? On the whole, however, the provision is a sensible one, and allows the court, in a question which is essentially historical, to act on evidence which historians would accept.

The other sections limit the scope of the Act to England and Wales, give it a short title, and provide that it is to come into force on the 1st January, 1934.

The Act is a distinctly useful one, as it will do a good deal to cut down the length of the evidence in cases affecting public rights of way. But I am rather surprised that the *Merstham Manor Case* is the only reported case upon it so far. I have seen, so far as I remember, only one notice put up under the Act. Having regard to the well-known acrimony that characterises this class of case, I am rather surprised that there has not been more litigation under the Act or more notices. I would suggest that it would be as well if solicitors who act for owners of land saw to it that their clients (and especially clients who are reversioners) knew about the Act and took steps to protect themselves. I do not believe that the average landowner has any idea that time is rapidly running against him. The authors of the only notice I have seen were a Cambridge college, who understand these matters better than the average landowner.

Landlord and Tenant Notebook.

Landlord's Acquiescence in Holding over.

Most people—and especially landlords of controlled properties—are alive to the danger of accepting rent from a tenant remaining in possession after the expiration of his term, if it is not desired to create a new tenancy. The presumption from any act of recognition is a strong one; so is the presumption in favour of a tenancy from year to year, though this, since the decision in *Ladies' Hosiery and Underwear Ltd.* v. *Parker* [1930] 1 Ch. 307, is perhaps more easily rebutted than was at one time thought possible.

In this article I propose to discuss the position which obtains when the landlord, not having any immediate use for the premises, raises no objection to the tenant continuing to occupy them and goes as far as to talk or write about the possibilities of a new tenancy.

It is well established that once a tenancy at will has been constituted, the tenant is entitled to notice, however short. In *Goodtitle d. Galloway* v. *Herbert* (1792), 4 T.R. 680, the defendant, ex-tenant of a farm, failed to prove (owing to the Statute of Frauds) an agreement for a lease; but the plaintiff, who had laid the demise on the 1st October, but whose lessor had not demanded possession till the 5th of that month, could not recover in the action.

But no such technicalities entered into the decision in *Whiteacre d. Boult* v. *Symonds* (1808), 10 Ea. 13. The facts were that the defendant's landlord gave him a proper notice to quit, expiring on the 11th October, 1806. In February, 1807, the landlord sold the property, undertaking to give possession in March. The defendant not having moved out, the proceedings were taken and the fictitious demise was laid on the 12th October, 1806.

It appeared that since that date the landlord's agent had told the defendant that he would not be turned out until the place was sold. Correspondence which passed between the two bore this out; indeed, the defendant, while complaining bitterly of the way in which he was being treated after many years, did not set up anything more than a conditional promise, which the agent admitted, claiming in turn to have been as good as his word. But at the hearing it was argued that if judgment were given for the plaintiff, this would imply that the defendant had been a trespasser since the 13th October, between which date and that of the sale the defendant was at least a licensee.

Lord Ellenborough, C.J., and his colleagues declined to construe the correspondence as conferring a licence "for the purpose now insisted upon," let alone a new tenancy; all that had happened was that the rights under the notice to quit had been suspended, but reserved and not waived. (As has since been pointed out, by Lush, J., in *Davies* v. *Bristow* [1920] 3 K.B. 428, "waiver" of a notice to quit is a convenient but inaccurate expression; this even when it is used to describe an agreement made during the currency of the notice.)

There was, of course, no tender of or receipt of rent in the above case. How completely the landlord loses his right to possession by accepting rent is usually illustrated by the decision in *Keith, Prowse & Co.* v. *National Telephone Co.* [1894] 2 Ch. 147. The relative agreement between the parties reserved an annual rent, payable quarterly. The (fixed) term expired on the 1st July, 1889. After that date the tenants, plaintiffs in the action, continued to occupy and to pay rent, but on the 29th December, 1893, they were two quarters in arrear. On that date they sent a six months' notice to quit to the defendants, the landlords. The defendants replied next day, the 30th December, by a letter which, *inter alia*, stated that rent was due for the quarter ending the 31st inst. The plaintiffs paid up on the same day, and were given a receipt. The letter also purported to determine the tenancy forthwith by virtue of a re-entry clause in the original agreement; but, as Kekewich, J., held, by receiving rent for the 31st December, the defendants put it out of their power to say that the agreement was determined on the 30th; they recognised the fact that the plaintiffs were in possession as tenants.

The authorities of *Whiteacre d. Boult* v. *Symonds* and *Keith, Prowse & Co.* v. *National Telephone Co.* were cited by the opposing sides in *School Board for London* v. *Peters* (1902), 18 T.L.R. 509. The plaintiffs had let the defendant a vacant site on a quarterly tenancy. After about seven years, they gave him notice to quit. On its expiration they took no steps to obtain possession, which he still enjoyed (without having paid any rent) some six months later, when their secretary wrote that it could probably be arranged for him to live on in undisturbed possession, upon condition that he raised no objection to the rent for the year. He wrote back and agreed. A few months later, they demanded possession and the defendant then paid a year's rent. In the action the plaintiffs contended that the facts were on all fours with those of *Whiteacre d. Boult* v. *Symonds;* there was merely a conditional promise, and they had fulfilled their part of the bargain. The defendant invoked *Keith, Prowse & Co.* v. *National Telephone Co.;* he had held over, rent had been demanded, had been paid, and had been accepted. The court held that the former decision applied; but it was said that if when the notice to quit had expired and the defendant remained in occupation he had made quarterly payments of rent, the presumption of a new tenancy would not have been rebutted.

Two other cases which are worth mentioning are *Doe d. Macartney* v. *Crick* (1805), 5 Esp. 196, and *Doe d. Hertford* v. *Hunt* (1836), 1 M. & W. 690, though the report of the former, which is incidentally the only authority that a verbal notice to quit is sufficient, is inadequate. It appeared that the purchaser of a reversion who wanted to occupy the property himself had told the defendant, a yearly tenant, that he must go at Old Michaelmas, which was the correct date for notice. At the same time the new landlord added that if it were convenient to the tenant he might stay on till Christmas, rent free. The verbal notice was followed by a written notice, served on the 8th April, expiring at Christmas. The report does not say when proceedings were taken, but one infers that it was after Christmas. The defences raised were that a verbal notice was bad, and that the written notice was bad because it named the wrong date. Both objections were overruled; with regard to the second, it was said that anyone entitled to six months' notice could not complain of nine months' notice, a proposition which appears to be beside the point.

Doe d. Hertford v. *Hunt*, however, illustrates a useful point of construction. Here the tenant gave notice to quit after unsuccessfully asking for a reduction of rent. During the currency of his notice he made a slightly increased offer; whereupon the landlord's agent wrote to the effect that he could have another year at the figure named provided he (the agent) could not, before a specified date, find a tenant who would undertake to pay what the property was worth. A prospective tenant arrived to see over the premises before the date named, but the defendant refused to admit him. Holding that the agreement, if any, implied as a condition precedent that the defendant should not prevent anyone from viewing the property, the court characterised his conduct as a sort of fraud upon the landlord.

Our County Court Letter.

THE CONTRACTS OF HOTEL SERVANTS.

In *Grove and Wife* v. *Ridge*, recently heard at Newton Abbot County Court, the claim was for damages for breach of contract and for the enticement of servants. The case for the plaintiffs was that they were hotel keepers at Dawlish, and had engaged the defendant and his wife (as waiter and cook respectively) at £100 a year on the 18th January, on the understanding that they would remain for the season. On the 25th April the defendant went for a walk and did not return, and on the 4th May his wife announced that he had another situation. A noise occurred in the kitchen the same evening, and the defendant's wife and the chambermaid were told to get on with their work. Instead of so doing they left, and the plaintiffs incurred expense and inconvenience. The defendant's case was that he left without notice because he thought he had some complaints. He did not ask his wife to leave, and only discovered her reason afterwards. The evidence of the defendant's wife was that, having objected to the plaintiffs discussing her husband in the hearing of the guests, she was told to leave. His Honour Judge Wethered held that the custom to give one month's notice in domestic service did not apply to hotel workers. It was usually supposed that employers and servants were entitled to a week's or month's wages in lieu of notice. Actually they were only entitled to damages, which in the circumstances he would assess at one shilling, as another servant replaced the defendant next day. There was no proof that the defendant persuaded his wife to leave, but he was liable to repay £1 for railway fares. Judgment was therefore given for the plaintiffs for £1 1s. as damages, without costs, as they had failed in the major part of their claim.

ACCIDENT TO STEVEDORE.

In a recent case in the Liverpool Court of Passage (*McLoughlin* v. *Mersey Docks and Harbour Board and Royal Mail Lines Ltd.*) the claim was for damages for negligence. The plaintiff's case was that he was employed by the Port of Liverpool Stevedoring Company and had sustained a broken ankle by falling over an uneven surface on a shed floor while carrying a hindquarter of beef from the second defendants' steamship "Nelia." The evidence was that the mishap occurred because the unevenness at a drainage grid was partially concealed by loose straw fallen from consignees' wagons awaiting delivery of the meat, although one man and sometimes more were constantly sweeping the floor. The presiding judge, Sir W. F. K. Taylor, K.C., held that the shed floor, without the straw, was not in itself a danger in a dock shed, where unevenness was to be expected. A depression in the stone happened to have been concealed by straw, but neither the first defendants as owners of the shed, nor the second defendants as occupiers of the shed as an appropriated berth, were liable for allowing anyone to use the shed with a slight depression in the setts. There was no contributory negligence, as the particles of straw prevented the plaintiff from seeing the depression. The plaintiff was employed by a stevedoring company, invited to the shed by the second defendants, but neither of them introduced the straw. The latter was brought by the consignees, and there was no duty on the second defendants to sweep it up. Judgment was given for the defendants with costs.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Under-tenant's Rights on Distress.

Q. 3492. A landlord having levied a distress, notice of a claim to some of the goods was given by an under-tenant to the bailiffs under the Law of Distress (Amendment) Act, 1908. The under-letting was unauthorised, however, so that, strictly speaking, the under-tenant is not entitled to protection. The bailiffs advise that as a claim in accordance with the Act has been made by the under-tenant, they cannot sell the goods claimed by him, even against an indemnity by the landlord. They advise, further, that although the under-tenant can bring the matter to an issue, if he will, by application to a magistrate he is not obliged to do so; and there is nothing which enables the landlord to bring the matter to an issue if he disputes the claim, beyond instructing the bailiffs to hold the goods. Is this really the case? We can find nothing in the Acts or text-books on the subject; but it seems remarkable that an unauthorised under-tenant, whose claim may be dishonest, should be able by the simple means of serving a notice under the Act to defeat a proper distress or delay its execution, and that the landlord should have no practical means of forcing an issue.

A. It is assumed that the statement that the under-tenant is not entitled to protection is made in reliance on s. 5 of the Law of Distress (Amendment) Act, 1908. An action should be brought in the county court claiming a declaration that the under-tenant's notice of claim is invalid. Such a claim can only be made in conjunction with a claim for damages, and damages should therefore be claimed for unlawfully obstructing the bailiff in the execution of his duty, viz., by serving him with an invalid notice. Strictly speaking, as the under-tenant is outside the Act, his notice is a nullity and therefore void. The bailiff would therefore be entitled to ignore it but they apparently will not take the risk. It is useless to sue them for breach of duty, in the absence of the sub-tenant, and therefore proceedings must be taken against the latter. It is to be noted that the making or subscribing of a declaration and inventory, knowing it to be untrue in any material particular, is a misdemeanour under the Perjury Act, 1911, s. 5.

Minerals under Railway Land.

Q. 3493. Clients of ours hold certain minerals under a lease by which they are given power to let down the surface upon paying compensation for any loss or damage caused thereby, but with regard to a portion of the surface which was conveyed in 1881 to a railway company, subject to the provision in the conveyance to the railway company, which is as follows: "and it is hereby declared and agreed by and between the said parties hereto that these presents are intended to operate and take effect as a conveyance of the said pieces or parcels of land hereinafter expressed to be hereby granted as near to the form in Schedule A to the Lands Clauses Consolidation Act 1845 as the circumstances of the case will admit and also in every other mode in which the same may operate and take effect independently of such last-mentioned Act but so as not to confer on the Company any further or other right to mines and minerals or to support whether lateral or vertical than the Company are entitled to under the said last-mentioned Act or the Railway Clauses Consolidation Act 1845." Our clients are now desirous of working the minerals under the land purchased by the railway company, and we shall be pleased to have your views as to whether the position is governed by the Mining Code under the Railway Clauses Consolidation Act, 1845, or under the provisions of the Mines (Working Facilities and Support) Act, 1923. In our view the position is regulated by the Railway Clause Consolidation Act, 1845. According to the commencement of s. 15 the new clauses therein contained are only substituted for the provisions of the Railway Clauses Consolidation Act, 1845, in the case of an instrument made after the passing of the 1923 Act. Kindly also let us have your general views on the position.

A. The position has been correctly interpreted by the questioners. The Mines (Working Facilities and Support) Act, 1923, does not derogate from any existing statutory rights. The opening words of s. 15 preserve all vested interests, as the questioners suggest. The result is that the Railway Clauses Consolidation Act, 1845, still regulates the rights of the parties *inter se*. "Future," in the marginal note to s. 15, means "made after the passing of this Act," as stated in the section. Section 13 of the 1923 Act also has some bearing on the problem, but it appears difficult to express any general views on the position. The rights of the parties depend on questions of fact as to the extent and area of the proposed workings.

Covenant against Alienation.

Q. 3494. In consideration of the A building society making an advance of £500 to B, upon security of a mortgage of a freehold house and garden, C (the builder of the house) is willing to enter into a guarantee whereby he makes himself responsible for the mortgage debt until such time as it has been reduced to £400 by periodical repayments by the mortgagor in accordance with the terms of the mortgage, and he is also prepared to deposit with the A building society the sum of £50 in cash by way of collateral security, which sum is charged by the deed of guarantee in favour of the A building society to meet any payments which may be due from C under his guarantee. It is the wish of the A building society to have inserted in the deed of guarantee a covenant on the part of C that he will not assign or charge the collateral cash deposit to any third party whilst it is subject to the A building society's rights under the deed of guarantee. Is such a covenant against alienation good in law? If it is possible to fetter C's right of alienation in this way, would an assignee of the collateral cash deposit acquire a good title in the event of C executing an assignment in breach of the covenant, and in such circumstances would the A building society's only remedy be a claim for compensation against C for breach of covenant?

A. An absolute covenant against alienation of a chose in action would be bad in law, but a covenant strictly limited in point of time seems to be unobjectionable, though of what advantage it would be to the building society we fail to see, unless it be that the building society thinks it would not be required to register any notice of assignment. The opinion is given that the building society could not in this way fetter the right of alienation and that the only result would be a claim for damages for breach of covenant. Different considerations would arise if the money was by the instrument to be treated not as a sum deposited but as an investment in share or loan capital.

To-day and Yesterday.

LEGAL CALENDAR.

20 SEPTEMBER.—For the criminal lawyer, the Sessions which ended at the Old Bailey on the 20th September, 1763, were highly satisfactory. A hundred and sixty-eight prisoners had been tried. Of these, one woman was sentenced to death for murder and another for shoplifting, besides eight persons for street robberies, one for forgery, one for personating a sailor to defraud the Government, and one for returning from transportation before the end of his sentence. Ten of these were actually executed. There were two transportations for fourteen years, and forty-one for seven years, besides one whipping and three brandings.

21 SEPTEMBER.—On the 21st September, 1714, Lord Cowper received the Great Seal as Chancellor from George I, newly arrived in England after the death of Queen Anne. In his diary he wrote: "I waited on K. accordingly at St. James's in the closet where the Q. used to receive me. The purse was lying in the window which the K. gave me speaking to me in French very shortly 'that he was desirous I should be restored to the charge of the custody of the Great Seal, he having been well satisfied with the character he had heard of me,' and I answered in English 'that . . . I would serve him faithfully and, as far as my health would allow, industriously.'"

22 SEPTEMBER.—On the 22nd September, 1483, Robert Morton, Archdeacon of Winchester, was removed from the Mastership of the Rolls by Richard III, when he fell under the suspicion of having been concerned in Buckingham's conspiracy. He remained in retirement until the end of the tragic reign, when he was reinstated. Under Henry VII he held the office in a peculiar fashion by joint tenure with another for their joint lives and that of the survivor. In 1486, on becoming Bishop of Worcester, he resigned.

23 SEPTEMBER.—On the 23rd September, 1801, Samuel Martin was born. He became a Baron of the Exchequer in 1850.

24 SEPTEMBER.—John Marshall, one of the greatest figures in the history of the United States, was born in Virginia on the 24th September, 1755. He grew up in a home ruled in patriarchal fashion by his father, Colonel Marshall, a cultured gentleman to whom, he said, "I owe the solid foundation of all my success in life." He was early destined for the law, but his studies were interrupted by the outbreak of the American War of Independence, when both father and son took up arms for liberty. After a distinguished fighting record, young John continued his career. He became Chief Justice of the Supreme Court in 1801.

25 SEPTEMBER.—"You did that case remarkably well, but it was no good; the facts were too strong. I prosecuted Rush for the murder of Mr. Jermy. I defended Daniel Good and I defended several other notable criminals when I was on the Norfolk Circuit. But if it will be any satisfaction to you, I may tell you that in my opinion you have to-day defended the greatest criminal that ever lived." So spoke Byles, J., striding up and down his private room to the counsel who had defended Catherine Wilson, the poisoner, tried at the Old Bailey on the 25th September, 1862, on a charge of murder, one of seven separate cases of which the police had particulars. For years she had pursued a systematic course of poisoning for profit.

26 SEPTEMBER.—Church and tavern stood in an unusual relationship to each other when the landlady of the "White Swan" at Derby and the sexton of the parish church were co-defendants before the local magistrates on the 26th September, 1883. The sexton had discovered on a Sunday that the church was short of wine for the Communion Service, and had applied to the landlady out of hours. Though there had been no payment at the time of purchase the bench took a severe view and fined them.

THE WEEK'S PERSONALITY.

Mr. Baron Martin in his rough and ready Irish way was the sort of judge who gathered a cloud of anecdotes about his name. Good-natured and generous, he was known to have sent a present of £10 to an unfortunate prisoner who had aroused his pity and to have refused to dine one night on circuit until he had persuaded a brother judge who had sentenced a man to death to write and post a letter there and then to the Home Secretary recommending a reprieve. Now and then his tongue was rougher than some people liked, but he was never cruel. Horse-racing was one of his chief interests, and once when a friend took him to admire the scenery of the Malvern Hills and asked him what he thought of it, he dug his heel into the turf in an expert manner and replied: "Well, they would make a capital race-course if they were levelled." After he had dined with the Dean of Winchester, his host confided to a friend that he did not appear to be a man of enlarged information. "He actually had never heard of William of Wykeham," he said. Martin also had formed an unfavourable opinion of the Dean. "He seems to be very deficient in a knowledge of what is going on in the world," he said. "He absolutely did not know what horse had won the last Derby."

STATE TRIALS.

There are still judges in Germany, and the result of some of the recent trials of clerics there, in particular the acquittal of Dr. Dibellius, the Superintendent-General of the German Evangelical Church in Prussia, may well be a warning even to a dictator that there would be peril in a too faithful repetition of the folly of the Seven Bishops' Trial. That demonstrated well enough the explosive effect of such prosecutions. After a night-long debate, the single dissentient juror, the King's brewer, was won over to acquittal. ("Whatever I do," he said, "I am sure to be half ruined. If I say 'Not Guilty' I shall brew no more for the King. If I say 'Guilty' I shall brew no more for anybody else.") The shout with which the verdict was greeted by the thousands gathered in and about Westminster Hall was heard at Temple Bar. For half an hour scarcely a word could be heard in the roar. The individual seized on the demand of the Solicitor-General for having violated the dignity of the court by cheering was dismissed with a gentle reprimand. Meanwhile, all London and all England took up the cry. Six months later, King James had fled.

FREE FIGHT IN COURT.

After being sentenced to two months' hard labour recently at Coventry Police Court, a prisoner resisted removal to the cells with such well-directed vigour, that a dozen constables had to go to the help of the warders, and, in the end, the struggling mass of men fell down the steps of the dock together. The scene must have been rather like that epic struggle at the Old Bailey, when a murderer enraged at the treachery of his accomplice tried to kill him in the dock. He had been at one time a professional strong man, and the warders were helpless. Amid the splintering of wood and the breaking of glass, reinforcements poured in, but the desperate man flung the constables from him as if they had been tailors' dummies in his ferocious attempts to reach his victim. The end of it all, however, had a touch of farce. A policeman of enormous girth climbed into the dock and falling on the prisoner seemed to bury him. The sheer weight rendered him helpless for long enough to enable the others to manacle him, and in chains he received sentence of death from Hawkins, J.

Notes of Cases.

Judicial Committee of the Privy Council.

H. H. Maharaja Man Singh of Sewai Jaipur *v.* Arjun Lal and Others.

Sir Lancelot Sanderson, Sir Shadi Lal and Sir George Rankin.
26th July, 1937.

INDIA—PUBLIC HIGHWAY—ERECTION BY OWNER OF SHOP OF PORTICO ON FOOTPATH OF STREET—PERMISSION OF LOCAL AUTHORITY OBTAINED—WHETHER PERMISSION OF ORIGINAL OWNER OF SOIL ON WHICH STREET BUILT NECESSARY—ROAD "VESTED" IN LOCAL AUTHORITY—MEANING—UNITED PROVINCES MUNICIPALITIES ACT (Act II of 1916), s. 116.

Appeal from a decision of the High Court of Allahabad.

The appellant maharaja was the owner of land within the limits of which lay a shop owned and occupied by the first respondents and a public street vested in the second respondents, the Municipal Board of Allahabad. The first respondents, with the sanction of the board, but without permission from the maharaja, erected a portico along the front of their premises and on the margin of a footpath of the street. The roof of the portico was a structure of masonry supported by iron pillars resting on the street, and the floor of the portico was raised by stone slabs or concrete about one foot above the level of the street. The maharaja brought an action for a mandatory injunction for the demolition of the portico, together with damages and other relief. The suit was dismissed in the Court of the Munsif at Allahabad. The subordinate judge, on appeal to him, granted the injunction, but the High Court reversed that decision. By s. 116 of the United Provinces Municipalities Act, 1916, all public streets, and the pavements, stones and other materials thereof "situated within the municipality shall vest in and belong to the board, and shall, with all other property which may become vested in the board, be under its direction, management, and control."

SIR GEORGE RANKIN, giving the judgment of the board, said that the appellant contended that the effect of s. 116 was to give the municipal board, not the full title to the *solum* of the street, but only a special property in it sufficient to enable the board to control it as a street; and that that right was not inconsistent with, and did not oust, the appellant's right, as owner of the land, to object to the erection of a building on it without his permission. The respondents, however, contended that the section was intended to make the board owners of the surface of the street and of so much above and below as was necessary for the discharge of their duties and the exercise of their powers under the Act. Both sides appealed to the decisions of the courts in England on the effect of similar language in English Acts, particularly in s. 149 of the Public Health Act, 1875. In *Municipal Council of Sydney* v. *Young* [1898] A.C. 457, at p. 459, Lord Morris put forcibly the restricted sense to be attributed to the word "vest" in enactments such as s. 116 of the United Provinces Act. It was equally true, however, that, as pointed out by Collins, M.R., in *Finchley Electric Light Co.* v. *Finchley Urban Council* [1903] 1 Ch. 437, at p. 440, the word "vest" meant that the local authority did actually become owners of the street to the extent that they became owners of so much of the air above and of the soil below as was necessary to the ordinary user of the street as a street and no more. Here the dispute was not with reference to something sufficiently below or above the surface of the street to be beyond the range of its ordinary user as a street. The erection undoubtedly required the sanction of the municipal board under s. 209 (1) (*b*) of the Act. Their lordships did not think that the Act intended that, apart from any right in the appellant to complain of it as a nuisance or that sanction was not duly granted, a structure affecting the surface and the space immediately above the surface was to be erected only by permission of the proprietor of the *solum* of the street as well as by leave of the municipal board. It was part of the purpose of s. 116 that the board should not lack the ownership necessary to support an effective control of such matters, and that the general property of the original landowner in the *solum* of the street should be modified and abridged in that behalf. Without in any way holding that s. 116 operated to convey title in the full sense, their lordships thought it certain that the original owner of the soil could not maintain trespass for an erection of the type in question. They expressed no opinion on the question whether a permanent structure with pillars resting on the highway was or was not an obstruction, or was an inappreciable obstruction to the highway, or was such as could be complained of by the Advocate-General or by others with his consent (see s. 91 of the Civil Procedure Code) on behalf of the public, or by a member of the public showing damage special to himself. Their lordships would advise that the appeal should be dismissed.

COUNSEL: *A. M. Dunne*, K.C., and *J. M. Parikh*, for the appellant; *J. E. Godfrey*, for the respondents.

SOLICITORS: *Hy. S. L. Polak & Co.; Douglas Grant & Dold.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.

Commissioners for the Port of Calcutta *v.* Calcutta Corporation.

Lord Alness, Sir George Lowndes and Sir Shadi Lal.
26th July, 1937.

INDIA—STATUTORY BODY—RAILWAY OWNED BY—PIPES OF LOCAL AUTHORITY UNDER RAILWAY LINE—AGREEMENT THAT WORK TO BE DONE TO PIPES BY RAILWAY OWNERS AT LOCAL AUTHORITY'S EXPENSE—LOCAL AUTHORITY'S PROPERTY FLOODED THROUGH ALLEGED NEGLIGENCE OF RAILWAY OWNERS' SERVANT WHILE DOING WORK IN CONNECTION WITH PIPES—WHETHER SUCH WORK SOMETHING DONE OR PURPORTING TO BE DONE IN PURSUANCE OF ACT INCORPORATING RAILWAY OWNERS—CALCUTTA PORT ACT (Bengal Act III of 1890), s. 142.

Appeal from a decision of the High Court of Judicature, Calcutta, reversing a decision of the same court in its original civil jurisdiction.

The appellant commissioners, a statutory body constituted under the Calcutta Port Act, 1890, were the owners and operators of a double-track railway. The respondent local authority had a pumping station near the railway, to which water was led from a river by four pipes which passed beneath the railway. The commissioners, having decided to lower the railway at a certain point in order to do away with the inconvenience of a level crossing existing there, were obliged to lower the local authority's four pipes, and duly did so, carrying the pipes below the lowered railway line in three brick tunnels. Subsequently the local authority wished to increase their supply of water from the river, which involved the laying of an additional pipe-line. As the new pipe also had to cross the railway line, it was agreed, by letters passing between the parties, that the appellant commissioners' staff should do the work of laying it at the local authority's expense. As the result of a severe fall of rain, flooding took place, and the local authority's pumping station was flooded and damaged. The local authority alleged that the flooding of the pumping station was due to two holes made by the railway owners' superintendent and which the superintendent had allowed to remain open. The holes in question had been made by the superintendent directly in connection with the project of the laying by the commissioners of the additional pipe-line for the local authority. The commissioners denied negligence and contended that they were in any event, protected by s. 142 of the Act of 1890. The Court of Appeal held that the appellants were not protected by s. 142 of the

Calcutta Port Act, 1890, which provides: "No suit shall be brought against any person for anything done or purporting or professing to be done in pursuance of this Act, after the expiration of three months from the day on which the cause of action in such suit shall have arisen."

LORD ALNESS, giving the judgment of the Board, said that the letters passing between the parties showed that an appeal had been made to the appellants as a statutory body to do certain work, and that they had assented. The work in question related to the appellants' track. It was being done on their property and in their interest. The workmen, including the superintendent, were paid by the appellants, presumably from statutory funds, and the work was superintended by them. In what the superintendent had done or omitted to do, he had been solely concerned in his employers' business. The respondents' argument being that the appellants had failed to repair a part of their line situated on their own land, it was vain to suggest that the appellants were acting in a private capacity. Their lordships could not accept the view that the appellants were acting in the capacity of private contractors. There was at the material time no contract between the parties. The appellants never divested themselves of their capacity as a port authority. The respondents had relied on *Bradford Corporation* v. *Myers* [1916] A.C. 242, which fell to be treated with care as it related to the construction of the English Public Authorities Protection Act, 1893, which did not contain the words of the Indian Act "purporting or professing to act." Those words were of pivotal importance. They postulated that work which was not done in pursuance of the statute might nevertheless be accorded its protection. The English Act had in *Bradford Corporation* v. *Myers*, *supra*, properly been treated as one from which those words were omitted. There was nothing in that case which forbade the interpretation which their lordships proposed to attach to the Indian Act, which apparently fell to be construed judicially for the first time. The respondents had argued that, while the Act protected against a claim based on breach of a statutory duty, it did not protect against an omission to perform a statutory duty. Their lordships could not accept that argument, which was unsupported by authority, or from any other source. The Court of Appeal appeared to have forgotten (1) that the appellants were engaged in work designed for the protection of their railway, and (2) that the neglect complained of was the leaving unrepaired of a portion of that railway. Their lordships would humbly advise that the appeal should be allowed.

COUNSEL: *Fergus Morton*, K.C., *L. P. E. Pugh* and *T. B. W. Ramsay*, for the appellants; *A. M. Dunne*, K.C., and *J. M. Pringle*, for the respondents.

SOLICITORS: *Sanderson, Lee & Co.*; *T. L. Wilson & Co.*

Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mansell *v.* **Star Printing and Publishing Co. of Toronto Ltd.**

Lord Atkin, Lord Macmillan, Lord Wright, Lord Alness and Lord Maugham. 28th July, 1937.

CANADA—COPYRIGHT—PICTURES PAINTED BEFORE 1ST JANUARY, 1924—RIGHTS—CANADIAN COPYRIGHT ACT (R.S.C., 1927, c. 32).

Appeal from a decision of the Court of Appeal of Ontario dismissing an appeal from a decision of the Supreme Court (Rose, C.J.).

The plaintiff (the appellant) was a publisher of fine art colour prints residing in England and doing business throughout the world. He complained that, between March and July, 1932, the respondent company, in infringement of his rights, published in Toronto, in the illustrated section of a newspaper owned by it, a number of pictures of which he claimed to be entitled to the copyright. The thirty-one pictures concerned in this appeal were all painted before the 1st January, 1924. The trial judge held that the appellant had no copyright in them in Canada and was consequently not entitled to any remedy against the respondent company.

LORD MACMILLAN, delivering the judgment of the Board, said that the appellant maintained that he was entitled to copyright in the thirty-one pictures by virtue either of (1) the Canadian Copyright Act, 1921, or (2) the Imperial Copyright Act, 1911. The pictures in question were "made" before the 1st January, 1924, and the appellant must establish his case under and in accordance with the provisions of s. 42. It was strenuously argued that s. 42, in dealing with the case of any person "entitled to any such right in any work as was specified in the first column of the 1st Sched. to this Act or to any interest in such a right," covered the case of a person who was entitled anywhere to copyright or an interest in copyright, and in particular the case of the appellant who asserted that he enjoyed in England before the 1st January, 1924, copyright or an interest in copyright in the pictures in question. Their lordships could not accept that reading. The copyright specified in the first column of the 1st Sched. to the Act must be existing copyright in Canada, for it was a new copyright in Canada that was to be substituted for it. Like was to be substituted for like. The matter was put beyond doubt by s. 42 (2), which dealt with the case where the author of any work in which "any such right as is specified in the first column of the 1st Sched. to this Act subsists" on the 1st January, 1924, had, before that date, assigned the right, or granted any interest, therein for the whole term of the right; in such a case, "at the date when, but for the passing of this Act, the right would have expired," the substituted right conferred by the section was, in the absence of express agreement, to pass to the author of the work, and any interest therein created before the 1st January, 1924, and then subsisting, was to determine, subject to certain qualifying provisions. The "right specified in the first column of the 1st Sched" was thus a right having a term which, but for the passing of the Act, would have expired at a certain date, and that term which the Act prolonged must plainly be a term prescribed by law in Canada. The date at which, but for the passing of the Act of 1921, the right would have expired could be ascertained from the previous Canadian Act of 1906 (R.S.C., c. 70) alone, under which copyright was conferred from the time of recording the copyright. The result of that analysis was to narrow the present issue to the simple question whether the appellant was, immediately before the 1st January, 1924, entitled to copyright in Canada in the thirty-one pictures? If so, he must have acquired the right under the previous Canadian Copyright Act, 1906. But the appellant had never acquired copyright in Canada in the thirty-one pictures under the Act of 1906, for he had never complied with the requirements of that Act. As to the appellant's alternative submission under the Imperial Copyright Act, 1911, their lordships were of opinion that he could derive no aid from it. Section 25 (1) provided that the Act should not extend to a self-governing dominion unless declared by the legislature of that dominion to be in force therein. The legislature of Canada had never declared that the Imperial Act of 1911 should be in force there. The appellant had sought to rely on s. 25 (2), but the Imperial Act conferred no rights in Canada, and it was only for the purposes of the rights conferred by it that Canada was to be treated as if the Act extended to it. Their lordships would humbly advise that the appeal be dismissed.

COUNSEL: *K. E. Shelley*, K.C., and *R. M. Fowler*, for the appellant; *Henn Collins*, K.C., and *D. L. McCarthy*, K.C., for the respondents.

SOLICITORS: *Sole, Sawbridge & Co.*; *Charles Russell & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mr. Sydney Philip Pope, of Exmouth, solicitor, left £14,509, with net personalty £12,608.

House of Lords.

Rowell *v.* Pratt.

Lord Atkin, Lord Thankerton, Lord Macmillan, Lord Wright and Lord Maugham. 26th July, 1937.

PROCEDURE—DISPUTE AS TO POTATOES—RETURN MADE TO POTATO MARKETING BOARD BY GROWER—WHETHER BOARD BOUND TO PRODUCE IN LEGAL PROCEEDINGS—EFFECT OF NON-PRODUCTION IF WRONGFUL—AGRICULTURAL MARKETING ACT, 1931 (21 & 22 Geo. 5, c. 42), s. 17.

Appeal from a decision of the Court of Appeal.

The plaintiff, Rowell, a potato-grower, contracted to plant and grow potatoes on 9½ acres of his farm, and to sell and deliver the whole of the produce of that 9½ acres for the 1934 season to the defendant, Pratt, a potato-merchant, at £2 10s. a ton. The defendant alleged that the plaintiff, instead of delivering the whole of the produce of those 9½ acres to him (the defendant) had sold and delivered to other buyers, at a higher price, about forty tons of potatoes grown on the 9½ acres, and he counter-claimed damages in respect of that alleged breach of contract. The plaintiff replied that the potatoes which he had sold to the other buyers were not part of the produce of the 9½ acres in question, but were grown in another field. Under the scheme established by the Agricultural Marketing Act, 1931, potato growers are required to make a return to the Potato Marketing Board of the total acreage of potatoes planted by them. The county court judge decided that the return made by the defendant was a privileged document. An official of the Potato Marketing Board was willing to produce the document if the plaintiff would consent. No such consent was given, and the county court judge found in favour of the plaintiff on the claim (which was admitted) and the counter-claim. The Court of Appeal (Slesser and Greene, L.JJ., Greer, L.J., dissenting) held that the language of s. 17 of the Act of 1931 was not apt to destroy the general and fundamental common law right to compel the production of relevant documents, and directed a new trial of the counter-claim. The plaintiff now appealed.

LORD MAUGHAM said that the instrument described as a *subpœna duces tecum* was in truth only a summons issued pursuant to s. 110 of the County Courts Act, 1888, and Ord. XVIII, r. 3, of the County Court Rules, 1903-35. (See now s. 109 of the County Courts Act, 1934, and Ord. XX, r. 8, of the County Courts Rules, 1936.) Under s. 111 of the Act of 1888 the penalty for refusing or neglecting "without sufficient cause" to produce the document was a fine not exceeding £10. The first point was whether, having regard to the terms of s. 17 of the Agricultural Marketing Act, the county court judge acted rightly in refusing to order the production of the return. With all respect to the majority in the Court of Appeal, he (Lord Maugham) did not think that the question could accurately be stated as being whether the return was a document privileged from production. The document was the property of third parties—namely, the Potato Board—and they were not objecting to producing the return in their own interest, but simply because they thought that s. 17 involved a statutory prohibition as regarded production. The reason for such a prohibition as that contained in s. 17 in a marketing scheme was obvious—namely, that farmers and other producers as a class were so reluctant to disclose the details of their business that such a scheme would have poor prospects of being brought into successful operation unless they were given an assurance that the information contained in the estimates, returns, accounts and so forth furnished by them would not be divulged to rivals or competitors. The proviso in s. 17 (2), according to its true construction, made an exception for any information required to be disclosed for the purposes of legal proceedings under the Act, and it accordingly followed that there was no exception for information which a litigant might desire to have disclosed for the purposes of legal proceedings not under the Act. That conclusion was sufficient to dispose of the appeal, but a second question had been elaborately argued, namely, whether assuming, contrary to the view above expressed, that the county court judge was wrong in refusing to order production of the return, that circumstance alone would have been a sufficient ground for ordering a new trial—a question of considerable importance. It was, in his (Lord Maugham's) opinion, clear that according to the modern practice no new trial should be granted because of the refusal of the judge to order production of a document in the hands of a third party, unless "some substantial wrong or miscarriage of justice has been thereby occasioned." This was not a case precisely within the terms of Ord. XXXIX, r. 6, of the Rules of the Supreme Court, since the stage of rejecting the evidence contained in the return had not been reached. But there could be no doubt that the rule must be held to apply by way of analogy to such a case as the present and it was necessary for the respondent when applying for a new trial to establish that there had been a substantial wrong or miscarriage. It was not possible to establish that some substantial wrong or miscarriage of justice had been occasioned unless *prima facie* evidence could be given to show that the return in fact contained statements such as the respondent imagined to exist in it. He (his lordship) was unable to see for the present purpose any substantial difference as regarded a claim to a new trial, between the present case and that of a litigant who sought a new trial on the ground that he had discovered since the trial some fresh evidence. He agreed with Greer, L.J., on both points, and the appeal must be allowed.

The other noble lords concurred.

COUNSEL: *John Morris*, K.C. and *Gerald Gardiner*, for the appellant; *D. N. Pritt*, K.C., and *S. L. Elborne*, for the respondent.

SOLICITORS: *Metcalfe, Copeman and Pettefar; Burton, Yeates and Hart*, agents, for *Southwell, Dennis and Farrow*, Wisbech.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Baker *v.* Cook (Inspector of Taxes).

Finlay, J. 28th June, 1937.

REVENUE—INCOME TAX—WINDING UP OF FILM COMPANY—SALE OF ASSETS—CURRENT FILMS DEALT WITH BY PURCHASING COMPANY AS AGENTS FOR COMPANY IN LIQUIDATION—WHETHER PROFITS ASSESSABLE ON LIQUIDATOR—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Case I.

Appeal from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant was the liquidator of a company called First National Pathé, Ltd., which was incorporated in 1927 with the object that it should carry out two agreements, the first between itself and a company, A, and the second between itself and a company, B. Both the A company and the B company became combined in First National Pathé, Ltd. Each of the agreements in question provided that if First National Pathé, Ltd., should be wound up, voluntarily or otherwise, the A and the B companies should purchase goodwill, copyright in pictures, etc., and the benefit of certain booking agreements; also that the A and the B companies should carry into effect on behalf of the liquidator of First National Pathé, Ltd., all booking agreements entered into by that company before its winding up, themselves retaining 10 per cent. of the gross moneys received by First National Pathé, Ltd., under the booking agreements. In fact, under those provisions, that company's plant, stock, etc., were handed over to successors in title of the A company, First National Pathé, Ltd.'s, offices being given up, and

its staff dispersed. After the liquidation, the liquidator produced no new films and by himself entered into no new contracts for the distribution of films, all the new business being entered into by the A and B companies on their own behalf. An assessment having been made on the liquidator of First National Pathé, Ltd., under Sched. D (Case I) to the Income Tax Act, 1918, for the year 1932–33, in respect of the profits of trade, the liquidator appealed, and the Special Commissioners upheld the assessments.

FINLAY, J., said that First National Pathé, Ltd., had gone out of business except for one important circumstance: their whole business might, obviously, have been handed over lock, stock and barrel to the A and B companies, instead of which it was arranged that, with regard to what remained, namely. "current films," all the necessary steps for exploiting them, making new arrangements for their being shown, and so on, was to be done by the new companies. Of the cases called to his attention, there was the well-known Irish case, *J. & R. O'Kane & Co.* v. *Inland Revenue Commissioners* (1922), 12 Tax Cas. 303, the substance of that decision appearing in Lord Buckmaster's speech at p. 347. In *Cohan's Executors* v. *Commissioners of Inland Revenue* (1924), 12 Tax Cas. 602, it was held on the facts that there was no evidence that certain executors had continued to carry on trade: see Atkin, L.J.'s judgment at p. 618. In *Hillerns & Fowler* v. *Murray* (1932), 17 Tax Cas. 77, a somewhat analogous matter was discussed fully, and a passage from Romer, L.J.'s judgment at p. 91, referring to *Cohan's Case, supra*, was in point. *Wilson Box* (*Foreign Rights*), *Ltd.* (*in liquidation*) v. *Brice* ((1936), 80 SOL. J. 836) did not seem to qualify the principles laid down in the above cases. The question then must be whether there was here evidence that a trade was being carried on on behalf of the liquidator of the company. The matter was defined in the Companies Act. Sections 191, 228 and 248 made it quite clear that a liquidator could carry on business so far as necessary for the winding up. It was clear that there were profits earned in respect of the current films here, and that 90 per cent. of those profits went to the liquidator, the remaining 10 per cent. being retained by the A or B company, operating as a sort of commission for their trouble in exploiting the current films to the best advantage. It was surprising if the 90 per cent. which went to the liquidator was not taxable. The Crown must show that it fell within the Income Tax Act. If there was any evidence on which the Special Commissioners could arrive at their finding that this trade was carried on by the A or B company as agents for the liquidator, then the Crown was right. If the whole thing had been sold, lock, stock and barrel, then no business would have been carried on by the liquidator, but also, in that event, the whole of the profits would have been assessable in the hands of the operating company, and it seemed to him (his lordship) that what had been done here made the whole difference. It seemed certain that a trade was being carried on in respect of the current films. The appeal must be dismissed.

COUNSEL: *Roland Burrows*, K.C., and *Q. Hogg*, for the appellant; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the respondent.

SOLICITORS: *Kenneth Brown, Baker, Baker; Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Kubach and Another *v.* Hollands and Another; Frederick Allen & Sons (Poplar) Limited, Third Party.

Lord Hewart, C.J. 29th July, 1937.

NEGLIGENCE — THIRD PARTY — EXPLOSION IN SCHOOL LABORATORY—FAULTY CHEMICAL SUPPLIED BY CHEMISTS TO SCHOOL MISTRESS—CHEMICAL OBTAINED FROM THIRD PARTY—NO EXAMINATION OF CHEMICAL AFTER PURCHASE —LIABILITY.

Claim against a third party.

The plaintiff, a girl of 13, was awarded £3,000 damages against Townson and Mercer, Limited, wholesale and retail chemists, the second defendants, for the loss of an eye caused by an explosion in a laboratory at her school. A special jury found in favour of the first defendant, the headmistress and owner of the school. The jury having found that the second defendants were negligent and solely responsible for the plaintiff's injuries, in that they supplied for experimental purposes, in place of manganese dioxide, a mixture which contained 10 parts of antimony sulphide to one part of manganese dioxide, judgment had been entered for the plaintiff against them for the amount awarded, with costs. Their claim against the third party, Frederick Allen and Sons (Poplar), Limited, who supplied them, was then argued before his lordship alone. The powder was bought by the second defendants from the third defendants, and they received with the powder an invoice from the third defendants which contained the words: "The above goods are accurate as described on leaving our works but they must be examined and tested by user before use. The above goods are not invoiced as suitable for any purpose but they are of the nature and quality described." Nevertheless, the second defendants made no examination and no test of the powder before re-sale, nor did they advise the science mistress who made the purchase that examination or test was necessary or desirable before use. *Cur. adv. vult.*

LORD HEWART, C.J., said that he had reluctantly come to the conclusion that the third parties must succeed. So far as contract was concerned, it appeared that the governing principle was that reiterated by Bruce, J., in *Bostock and Co., Ltd.* v. *Nicholson* [1904] 1 K.B. 725. Light was also thrown on the present case by the decision of the House of Lords in *Donoghue* v. *Stevenson* [1932] A.C. 562, where it was held that the manufacturer of an article of food, medicine, or the like, sold by him to a distributor in circumstances which prevented the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, was under a legal duty to take reasonable care that the article was free from defect likely to cause injury to health. His lordship referred to the speech of Lord Atkin, at p. 599, and said that the case there contemplated was in essential respects the opposite of the present case. The manganese dioxide which the third party ought to have supplied here to the second defendant might have been re-sold for a variety of purposes or innocuous compounds or mixtures. The use of it for school experiments was only one of the many possible uses, and the third party, unlike the second defendants, had no notice of the intended use. More than that, it was common ground that a very simple test, if it had been carried out, as the third party's invoice prescribed, and as the first defendant was not warned, would immediately have exhibited the fact that antimony sulphide had erroneously been made up and delivered as manganese dioxide. The second defendants had ample and repeated opportunity of intermediate examination, and, if they had taken the simple precaution which the invoice warned them to take, no mischief would have followed. The like conclusion was illustrated also in *Grant* v. *Australian Knitting Mills Ltd.* [1936] A.C. 85 (79 SOL. J. 815). It was to be observed also that the jury had awarded damages against the second defendants, not for breach of contract, but for negligence—that was to say, for negligence in omitting to make any test for themselves and yet at the same time concealing from their purchaser the warning contained on the invoice with which they had received the powder. There must be judgment for the third defendants against the second defendants.

COUNSEL: *F. J. Tucker*, K.C., and *F. M. Landau*, for the plaintiffs; *Blanco White*, K.C., and *H. G. Garland*, for the first defendant; *Rowland Thomas*, K.C., and *D. A. Scott*

Cairns, for the second defendants; *N. L. Macaskie*, K.C., and *M. Berryman*, for the third party.

SOLICITORS: *W. G. R. Saunders & Son; Hamilton, Hill and Evershed; William Easton and Sons; Berrymans.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

SIR ANTON BERTRAM.

Sir Anton Bertram, formerly Chief Justice of Ceylon, died at Salisbury, on Thursday, 16th September, at the age of sixty-eight. He was educated at the City of London School, and Gonville and Caius College, Cambridge. In 1891 he became President of the Union and was elected a Fellow of his college. He was called to the Bar by Lincoln's Inn in 1893. He was appointed Attorney-General for the Bahamas in 1902, and in 1907 he was transferred to Cyprus as a Puisne Judge. In 1911 he was appointed Attorney-General for Ceylon, and he was knighted in that year. Sir Anton became Chief Justice of Ceylon in 1918 and held that office until 1925, when he retired. He became a Fellow of Peterhouse, Cambridge, in 1928.

HIS HONOUR JUDGE A. S. HOGG.

His Honour Judge Adam Spencer Hogg, Judge of County Courts on Circuit 48, died at his home at Epsom on Sunday, 19th September, at the age of sixty-seven. He was educated at Uppingham and Trinity College, Oxford, and was called to the Bar by the Inner Temple in 1893. He practised on the Northern Circuit until 1911, when he was appointed Stipendiary Magistrate for the Borough of Salford. Two years later he was appointed Judge of County Courts on Circuit 5 (Lancashire), and in 1928 he was transferred to Circuit 48 (Surrey, etc.). He was Chairman of the Miners' Conciliation Board for Lancashire, Cheshire and Staffordshire in 1922.

MISS C. MACMILLAN.

Miss Chrystal Macmillan, M.A., B.Sc., barrister-at-law, of Pump Court, Temple, E.C., died at a nursing home in Edinburgh, on Tuesday, 21st September. Miss Macmillan was educated at St. Leonard's School, St. Andrews, at Edinburgh University, and at Berlin University. She was called to the Bar by the Middle Temple in 1924. She was President of the Open Door International for the Economic Emancipation of the Woman Worker, and an executive member of a number of women's societies. From 1913 to 1920 she was Secretary of the International Woman Suffrage Alliance.

MR. H. G. IVENS.

Mr. Harry George Ivens, solicitor, senior partner in the firm of Messrs. H. G. Ivens & Hill, of Kidderminster, died on Saturday, 11th September, at the age of sixty-nine. Mr. Ivens served his articles with his father, the late Mr. T. F. Ivens, who was senior partner in the firm of Messrs. Ivens, Morton & Morton, of Kidderminster, and was admitted a solicitor in 1890. He practised on his own account for some years, and later he was joined by Mr. W. P. Hill. Mr. Ivens had been Clerk to the Governors of Kidderminster High School for nearly fifty years, and also, since 1922, to the Governors of King Charles I School.

The next Examination of candidates for admission to the Society of Incorporated Accountants and Auditors will be held on 1st, 2nd, 3rd and 4th November, 1937, in London, Manchester, Cardiff, Leeds, Glasgow, Dublin, Belfast, Cape Town, Johannesburg and Durban. Women are eligible under the Society's regulations to quality as incorporated accountants upon the same terms and condition as men. Particulars and forms are obtainable at the office of the Society, Incorporated Accountants' Hall, Victoria Embankment London, W.C.2.

Books Received.

The Bank and Insurance Shares Year Book, 1937–38. Crown 8vo. pp. xxxix and 717. London: Trust of Insurance Shares, Ltd. 10s. 6d. net.

Sur-Tax Tables. Compiled in the Inland Revenue Department, London. 1937. F'cap. 4to. pp. 24. London: H.M. Stationery Office. 1s. net.

Inflated Industrial Share Capital. By P. D. LEAKE, F.C.A, 1936. London: Gee & Co. (Publishers) Ltd. 6d. net.

The Construction of Consolidated Accounts. By T. B. ROBSON. M.B.E., M.A., A.C.A. 1936. London: Gee & Co. (Publishers), Ltd. 1s. 6d. net.

Solicitors' Accounts under the 1933 *Act.* By W. J. BACK, A.S.A.A. 1936. London: Gee & Co. (Publishers), Ltd. 6d. net.

A Digest and Index of the Official Reports of Tax Cases. By Sir EDWARD R. HARRISON, LL.B., of the Middle Temple, Barrister-at-Law. First Supplement to the Fifth Edition, 1937. Prepared under the direction of the Inland Revenue. Royal 8vo. pp. x and 158. London: H.M. Stationery Office. 5s. net.

Report of Operations and Proceedings under the Land Drainage Act, 1930. 1937. London: H.M. Stationery Office. 1s. 6d. net.

Restriction of Ribbon Development Act, 1935. Review of decisions given by the Minister of Transport up to 30th June, 1937, on appeals made to him under s. 7 (4). 1937. London: H.M. Stationery Office. 2s. net.

Societies.

The Law Society.

PROVINCIAL MEETING, 1942.

The Council of The Law Society have accepted an invitation from the Hampshire Law Society to hold the Provincial Meeting at Southampton in the year 1942, which will coincide with the Jubilee of the Hampshire Law Society.

SCHOOL OF LAW.

Copies of the annual prospectus for the session 1937–38 and of the detailed time-table for the Autumn Term can be obtained on application to the Principal's Secretary.

The Principal (Dr. G. R. Y. Radcliffe) will be in his room to advise students on their work, on Wednesday, 29th September (students whose surnames commence with the letters A–K), and on Thursday, 30th September (students whose surnames commence with the letters L–Z), from 10.30 a.m. to 12.30 p.m., and from 2 p.m. to 4.30 p.m. The first lectures will be held on 4th October.

For intermediate students there will be courses on (i) Public Law (the Courts of Justice), (ii) the Law of Property in Land (Pt. II), (iii) the Law of Tort, (iv) Accounts and Book-keeping, and (v) Trust Accounts.

Intermediate students must notify the Principal's Secretary before 30th September on the entry form, whether they wish to take morning or afternoon courses.

The first examination under the new final scheme will take place in November, 1938. The final subjects on the time-table for the Autumn Term are (i) Property and Conveyancing and Bills of Sale, (ii) Company Law and Bankruptcy, (iii) Agency: Master and Servant. The course on the Law of Shipping, one of the optional subjects for the new final, will be continued, and there will also be a course in the optional subject of Conflict of Laws.

There will also be courses on (i) Conveyancing, (ii) Tort, (iii) Private International Law, and (iv) Jurisprudence, for Honours and Final LL.B. students; and on (i) the English Legal System, (ii) Roman Law, and (iii) Elementary Equity for Intermediate LL.B. students.

Students can obtain copies of the regulations governing the three studentships of £40 a year each, offered by the Council for award in July next, on application to the Principal's Secretary.

Legal Notes and News.

Honours and Appointments.

The Colonial Office announce that the King has been pleased to approve the appointment of Sir ROGER E. HALL, Chief Justice of the Uganda Protectorate, as Chief Justice of the Federated Malay States, in succession to Sir Samuel Thomas, who is about to retire from the service. His Majesty has also been pleased to approve the appointment of Mr N. H. P. WHITLEY, M.C., Puisne Judge, Straits Settlements, as Chief Justice of Uganda.

Professional Announcements.

(2s. per line.)

F. H. HEALD & Co., of 267, High Street North, Manor Park, E.12, announce that they are moving to 218/220, High Street North, East Ham, E.6, where the practice will be carried on by JOHN LINSLEY LINSLEY-THOMAS as heretofore, on and after the 27th September, 1937, under the name of "LINSLEY-THOMAS, HEALD & Co."

Notes.

The Institute of Bankers, of 5, Bishopsgate, E.C.2, announces that on and after the 30th September, 1937, the address of the Institute will be 11, Birchin Lane, E.C.3.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 7th October, 1937, at 10 o'clock in the forenoon.

The presentation of testimonial gifts to Mr. D. W. Douthwaite, on his retirement from the Under-Treasurership of Gray's Inn, will take place in the Hall of Gray's Inn on Thursday, 30th September, at 4.30 p.m. Mr. Douthwaite held the office of Under-Treasurer from 1899 to 1937.

The General Purposes Committee of the Court of Aldermen have decided that the Courts of Summary Jurisdiction for the City of London for the hearing of cases under the Summary Procedure (Domestic Proceedings) Act, 1937, shall be constituted by the Lord Mayor or one of the aldermen of the City sitting alone at the Mansion House Justice Room or Guildhall Justice Room. The Act comes into force on 1st October.

The following days and places have been fixed for holding the Autumn Assizes, 1937, on the South Eastern Circuit: Mr. Justice Branson: Tuesday, 12th October, at Cambridge; Saturday, 16th October, at Norwich; Saturday, 23rd October, at Bury St. Edmunds; Saturday, 30th October, at Chelmsford. Mr. Justice Charles: Wednesday, 10th November, at Hertford; Saturday, 13th November, at Maidstone; Tuesday, 23rd November, at Kingston; Tuesday, 30th November, at Lewes.

Mr. Frank Powell, the Greenwich magistrate, takes exception to an accused person being termed "prisoner" until he has been found guilty, says *The Times*. "Perhaps it's a fad of mine," he said last Monday to a police inspector, who had so referred to a works manager charged with driving a motor car while under the influence of drink, "but I rather object to a person in this position being called 'the prisoner.' In English law a man is presumed to be innocent until he is found guilty, and it is a little humiliating in these circumstances to be constantly referred to as 'the prisoner.' I don't know what is the proper definition; but I have always adopted the attitude that a person is 'the defendant' until he is convicted. It is nicer, and it is what I like, especially when dealing with a respectable man."

Wills and Bequests.

Mr. John Howard Waterman, retired solicitor, of West Hampstead and Bexhill, left estate of the gross value of £31,602, with net personalty £21,631. He left the residue of the property to his wife for life, and then £3,000 to the Methodist Missionary Society.

Mr. Charles Knight, solicitor, of Otford, Kent, and of Aldermanbury, E.C., left £26,105, with net personalty £24,520.

Mr. Albert Henry Symons, solicitor, of Leigh-on-Sea, and Romford, left £24,513, with net personalty £23,882.

Major Christopher Alexander Markham, F.S.A., J.P., of Flore, Northants, retired solicitor, left £18,245, with net personalty £9,604.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th October, 1937.

	Div. Months.	Middle Price 22 Sept. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	108	3 14 1	3 8 4
Consols 2½%	JAJO	73⅜	3 7 9	—
War Loan 3½% 1952 or after	JD	100½	3 9 8	3 9 2
Funding 4% Loan 1960-90	MN	111	3 12 1	3 6 2
Funding 3% Loan 1959-69	AO	95	3 3 2	3 5 1
Funding 2¾% Loan 1952-57	JD	94	2 18 6	3 3 3
Funding 2½% Loan 1956-61	AO	87½	2 17 2	3 5 2
Victory 4% Loan Av. life 22 years	MS	108	3 14 1	3 9 6
Conversion 5% Loan 1944-64	MN	113½	4 8 1	2 10 10
Conversion 4½% Loan 1940-44	JJ	106⅜	4 4 7	2 5 7
Conversion 3½% Loan 1961 or after	AO	99½	3 10 6	—
Conversion 3% Loan 1948-53	MS	98½	3 0 11	3 2 7
Conversion 2½% Loan 1944-49	AO	94⅜	2 12 9	3 0 6
Local Loans 3% Stock 1912 or after	JAJO	84⅜	3 10 9	—
Bank Stock	AO	338½	3 10 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	113	3 19 8	3 5 3
India 3½% 1931 or after	JAJO	91½	3 16 6	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 4 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 5 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	88	2 16 10	3 8 1
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 10
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 16 11
Canada 4% 1953-58	MS	107	3 14 9	3 8 6
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 16 0
New Zealand 3% 1945	AO	96	3 2 6	3 12 5
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
Victoria 3½% 1929-49	AO	96	3 12 11	3 18 6
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	87	3 9 0	—
Croydon 3% 1940-60	AO	94	3 3 10	3 7 5
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3 11 5	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83	3 12 3	—
Manchester 3% 1941 or after	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	94½	2 12 11	3 1 0
Metropolitan Water Board 3% "A" 1963–2003	AO	85½	3 10 2	3 11 5
Do. do. 3% "B" 1934-2003	MS	86½	3 9 4	3 10 6
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950–70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	84½	3 11 0	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	105½	3 15 10	—
Gt. Western Rly. 4½% Debenture	JJ	116½	3 17 3	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124	4 0 8	—
Gt. Western Rly. 5% Preference	MA	116½	4 5 10	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 12 1
Southern Rly. 5% Guaranteed	MA	125	4 0 0	—
Southern Rly. 5% Preference	MA	113½	4 8 1	—

*Not available to Trustees over par.

‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

COUNTY COURT CALENDAR FOR OCTOBER, 1937.

Circuit 1—Northumberland, etc.
His Hon. Judge Thesiger
Alnwick, 20
Berwick-on-Tweed,
Blyth, 11
Consett, 22
Gateshead, 5
Hexham, 18
Jarrow, 21
Morpeth,
†*Newcastle-upon-Tyne, 8 (J.S.), 11 (R.B.), 12, 13 (B.), 14, 15 (A.), 27 (R.B.)
North Shields, 19, 25 (B.)
South Shields, 4, 6

Circuit 2—Durham, etc.
His Hon. Judge Richardson
Barnard Castle, 21
Bishop Auckland, 20
*Durham, 18, 19
Guisborough, 22
†*Middlesbrough, 14 (J.S.), 29
Seaham Harbour, 25
†*Stockton-on-Tees, 26
Stokesley (*as business requires*)
†*Sunderland, 27 (B.), 28
†West Hartlepool, 15

Circuit 3—Cumberland, etc.
His Hon. Judge Allsebrook
Alston,
Appleby, 23
†*Barrow-in-Furness, 6, 7
Brampton, 21
*Carlisle, 19
Cockermouth,
Haltwhistle, 15
*Kendal, 20
Keswick, 7 (R.)
Kirkby Lonsdale, 9
Millom, 11
Penrith, 22
Ulverston, 5
†*Whitehaven, 13
Wigton, 18
Windermere, 8
*Workington, 14

Circuit 4—Lancashire.
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 21
†*Blackburn, 4, 6 (R.B.), 11, 18 (J.S.)
†*Blackpool, 6, 7, 8 (R.B.), 13, 20 (J.S.)
*Chorley, 14
Clitheroe, 22
Darwen, 15 (R.)
Lancaster, 8
†*Preston, 5, 12, 15 (R.B.), 19 (J.S.)

Circuit 5—Lancashire.
His Hon. Judge Crosthwaite
†*Bolton, 5 (J.S.), 13, 20, 26 (J.S.)
Bury, 11, 18 (J.S.)
*Oldham, 7 (J.S.), 14, 21, 28 (J.S.)
*Rochdale, 8, 22 (J.S.), 29
*Salford, 1, 4, 6 (J.S.), 12 (J.S.), 15, 19 (J.S.), 25, 27 (J.S.)

Circuit 6—Lancashire.
His Hon. Judge Dowdall, K.C.
His Hon. Judge Procter
†*Liverpool, 1 (B.), 4, 5, 6, 7, 8 (B.), 11, 12, 13, 14, 15 (B.), 18, 20, 21, 22 (B.), 25, 26, 27, 28, 29 (B.)
St. Helens, 13, 27
Southport, 12, 19, 26
Widnes, 15
*Wigan, 14, 28

Circuit 7—Cheshire, etc.
His Hon. Judge Richards
Altrincham, 20
*Birkenhead, 7 (R.), 13 (R.), 14, 18, 21 (R.), 27 (R.), 28, 29
Chester, 5, 26
*Crewe, 15
Market Drayton, 1
Nantwich,
*Northwich, 21
Runcorn, 12
Sandbach,
*Warrington, 7, 8, 21 (R.)

Circuit 8—Lancashire.
His Hon. Judge Leigh
Leigh, 8, 22
†*Manchester, 4, 5, 6, 7, 11, 12, 13, 14, 15 (B.), 18, 19, 20, 21, 25, 26, 27, 28, 29 (B.)

Circuit 10—Lancashire, etc.
His Hon. Judge Burgis
*Ashton-under-Lyne, 25 (R.B.), 29
*Burnley, 11 (R.B.), 14, 15
Colne,
Congleton, 22
Hyde, 18
*Macclesfield, 12 (R.B.), 28
Nelson, 13
Rawtenstall, 20
Stalybridge, 21
*Stockport, 19, 26, 27, 29 (R.B.)
Todmorden, 12

Circuit 12—Yorkshire.
His Hon. Judge Frankland
*Bradford, 6 (R.B.), 12, 21 (R.B.), 22 (J.S.), 26, 29
*Halifax, 8 (R.B.), 14, 15
*Huddersfield, 13 (R.B.), 19, 20
Keighley, 13
Skipton, 27

Circuit 13—Yorkshire, etc.
His Hon. Judge Essenhigh
*Barnsley, 6, 7, 8
Glossop, 20 (R.)
Rotherham, 12, 13
*Sheffield, 1, 5 (J.S.), 14, 15, 20, 21, 22, 27, 28, 29

Circuit 14—Yorkshire.
His Hon. Judge Stewart
Dewsbury, 7 (R.B.), 12
Leeds, 1, 5 (R.B.), 6 (R.), 7 (J.S.), 8 (R.), 13 (R.), 14 (J.S.), 15, 19 (R.B.), 20, 21 (J.S.), 22, 27, 28 (J.S.), 29
Otley, 6
Wakefield, 5 (R.), 14 (R.B.), 26

Circuit 15—Yorkshire, etc.
His Hon. Judge Gamon
Darlington, 6
Easingwold, 4
*Harrogate, 8, 22
Helmsley, 28
Leyburn, 18
*Northallerton, 14
Pontefract, 20, 25, 26 (J.S.), 27
Richmond, 29
Ripon, 12
Tadcaster, 21
Thirsk, 7
*York, 5, 19

Circuit 16—Yorkshire.
His Hon. Judge Sir Reginald Banks, K.C.
Beverley, 14 (R.), 15
Bridlington, 11
Goole, 19
Great Driffield,
†*Kingston-upon-Hull, 4, 5, 6, 7, 8 (J.S.), 11 (R.B.), 18
New Malton,
Pocklington, 28
*Scarborough, 12, 13, 19 (R.B.)
Selby, 29
Thorne, 21
Whitby,

Circuit 17—Lincolnshire.
His Hon. Judge Langman
Barton-on-Humber,
†*Boston, 7 (R.), 14
Brigg, 18
Caistor,
Gainsborough, 6 (R.), 13
Grantham, 22
†*Great Grimsby, 5, 7 (J.S.), 8, 9, 20 (J.S.), 21 (*R. every Wednesday*)
Holbeach, 27
Horncastle,
*Lincoln, 7 (R.), 11, 21 (R.B.)
*Louth, 19
Market Rasen, 26
Scunthorpe, 11 (R.) 25
Skegness, 15
Sleaford, 12
Spalding, 28
Spilsby, 8 (R.)

Circuit 18—Nottinghamshire, etc.
His Hon. Judge Hildyard, K.C.
Doncaster, 5, 6, 7, 8
East Retford, 12
Mansfield, 25, 26
Newark, 4
*Nottingham, 7 (R.B.), 13, 14 (J.S.), 15, 20, 21, 22 (B.)
Worksop, 19, 26 (R.)

Circuit 19—Derbyshire, etc.
His Hon. Judge Longson
Alfreton, 12
Ashbourne,
Bakewell, 5
Burton-upon-Trent, 13, 27 (R.B.)
Buxton,
*Chesterfield, 8, 15
*Derby, 6, 19 (R.B.), 20, 21 (J.S.)
Ilkeston, 19
Long Eaton, 14
Matlock,
New Mills, 11
Wirksworth, 7

Circuit 20—Leicestershire, etc.
His Hon. Judge Galbraith, K.C.
Ashby-de-la-Zouch, 14, 26
*Bedford, 18, 20
Bourne, 13 (R.)
Hinckley, 4 (R.)
Kettering, 19
*Leicester, 1 (R.B.), 4, 5, 6, 7 (B.), 8, 15 (R.), 25
Loughborough, 12
Market Harborough, 13
Melton Mowbray, 1 (R.), 22
Oakham, 15
Stamford, 11
Wellingborough, 21

Circuit 21—Warwickshire.
His Hon. Judge Dale
His Hon. Judge Ruegg, K.C. (Add.)
*Birmingham, 1, 4, 5, 6, 7, 8, 11, 12 (B.), 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 22—Herefordshire, etc.
His Hon. Judge Roope Reeve, K.C.
Bromsgrove, 22
Bromyard,
Evesham, 13
Great Malvern, 11
Hay,
*Hereford, 12
*Kidderminster, 5
Kington, 20
Ledbury, 6
*Leominster, 18
*Stourbridge, 14, 15
Tenbury, 21
*Worcester, 7, 8

Circuit 23—Northamptonshire.
His Hon. Judge Hurst
Atherston, 7
Bletchley, 25
*Coventry, 4, 5, 18, 20 (R.B.)
Daventry, 21
Leighton Buzzard,
*Northampton, 8 (R.B.), 11, 12, 19 (R.)
Nuneaton, 15
Rugby, 14, 28 (R.)
Watford, 6, 20, 27

Circuit 24—Monmouthshire, etc.
His Hon. Judge Thomas
Abergavenny,
Abertillery, 12
Bargoed, 13
Barry, 7
Blaenavon, 27
†*Cardiff, 4, 5, 6, 8, 9
Chepstow, 28
Monmouth, 25
†*Newport, 19, 21
Pontypool, 20
*Tredegar, 14

Circuit 25—Staffordshire, etc.
His Hon. Judge Tebbs
*Dudley, 5, 19 (J.S.), 26
*Walsall, 7, 14 (J.S.), 21, 28 (J.S.)
*West Bromwich, 6, 13 (J.S.), 20, 27 (J.S.)
*Wolverhampton, 8, 15 (J.S.), 22 (J.S.), 29

Circuit 26—Staffordshire, etc.
His Hon. Judge Ruegg, K.C.
Burslem, 14
*Hanley, 7 (R.), 21, 22
Leek, 11
Lichfield, 27
Newcastle-under-Lyme, 12
*Stafford, 8
*Stoke-on-Trent, 6
Stone,
Tamworth, 28
Uttoxeter,

Circuit 28—Shropshire, etc.
His Hon. Judge Samuel, K.C.
Brecon, 15
Bridgnorth, 13
Builth Wells, 7
Craven Arms, 5
Knighton, 11
Llandrindod Wells, 8
Llanfyllin,
Llanidloes,
Ludlow, 6
Machynlleth,
Madeley, 14
*Newtown,
Oswestry, 12
Presteign,
*Shrewsbury, 18, 21
Wellington, 19
Welshpool,
Whitchurch, 20

Circuit 29—Carnarvonshire, etc.
His Hon. Judge Sir Artemus Jones, K.C.
Bala,
†*Bangor, 11
*Carnarvon, 13
Colwyn Bay, 14
Conway,
Corwen,
Denbigh,
Dolgelly,
*Festiniog, 6
Flint, 13 (R.)
Holyhead,
Holywell, 4
Llandudno,
Llangefni, 12
Llanrwst, 15
Menai Bridge,
Mold, 20
*Portmadoc, 7
Pwllheli, 8
Rhyl, 22
Ruthin, 5
*Wrexham, 18, 19

Circuit 30—Glamorganshire.
His Hon. Judge Williams, K.C.
*Aberdare, 5
Bridgend, 26, 27, 28, 29
Caerphilly, 21 (R.)
*Merthyr Tydfil, 7, 8
*Mountain Ash, 6
Neath, 19, 20, 21
*Pontypridd, 13, 14, 15
Port Talbot, 22
*Porth, 11
*Ystradyfodwg, 12

Circuit 31—Carmarthenshire, etc.
His Hon. Judge Davies
Aberayron,
†*Aberystwyth, 14
Ammanford, 13, 25
Cardigan, 12
†*Carmarthen, 21
†*Haverfordwest, 20
Lampeter, 9
Llandilofawr, 11
Llandovery,
Llanelly, 1, 22
Narberth, 19
Newcastle-in-Emlyn,
Pembroke Dock, 18
*Swansea, 4, 5, 6, 7, 8

Circuit 32—Norfolk, etc.
His Hon. Judge Rowlands
Beccles,
Bungay, 25
Diss, 26
Downham Market, 7
East Dereham,
Eye,
Fakenham,
†*Great Yarmouth, 21, 22
Harleston,
Holt,
†*King's Lynn, 14, 15
†Lowestoft, 8
North Walsham,
*Norwich, 19, 20
Swaffham, 27
Thetford, 5
Wymondham, 23

Circuit 33—Essex, etc.
His Hon. Judge Hildesley, K.C.
Braintree,
Brentwood,
*Bury St. Edmunds, 12
*Chelmsford, 11
Clacton, 19
Colchester, 27, 28
Felixstowe, 20
Halesworth, 26
Halstead, 8
Harwich, 15
†*Ipswich, 1 (B.), 6, 7
Maldon,
Saxmundham,
Stowmarket, 22
Sudbury, 13
Woodbridge,

Circuit 34—Middlesex.
His Hon. Judge Dumas
Uxbridge, 12, 19, 26

Circuit 35—Cambridgeshire, etc.
His Hon. Judge Farrant
Biggleswade, 12
Bishops Stortford, 20
*Cambridge, 13, 14
Ely,
Hitchin, 11
Huntingdon,
*Luton, 7
March, 18
Newmarket, 21
Oundle, 25
*Peterborough,
Royston,
Saffron Walden,
Thrapston,
Wisbech, 26

Circuit 36—Berkshire, etc.
His Hon. Judge Cotes-Preedy, K.C.
*Aylesbury, 1, 15 (R.B.)
Banbury, 6 (R.B.), 13
Buckingham, 26 (R.)
Chipping Norton, 27 (R.)
Henley-on-Thames, 15
High Wycombe, 14
*Oxford, 11, 25 (R.B.)
*Reading, 28, 29
Shipston-on-Stour, 19
Stratford-on-Avon, 21
Thame,
Wallingford, 18
Wantage, 12
Warwick, 22 (R.B.)
*Windsor, 20, 26
Witney, 27

Circuit 37—Middlesex, etc.
His Hon. Judge Hargreaves
Chesham, 5
*St. Albans, 19
West London, 1, 4, 6, 7, 8, 18, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 38—Middlesex, etc.
His Hon. Judge Beazley
*Edmonton, 1 (R.), 8 (R.), 14, 15 (R.), 20 (R.B.), 21, 22, 27, 28, 29 (R.)
Grays Thurrock, 5
*Hertford, 13
Ilford, 4 (R.), 11 (R.), 18 (R.), 19, 25 (R.), 26
*Southend, 6, 7, 8

Circuit 39—Middlesex.
His Hon. Judge Lilley
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Shoreditch, 1, 15, 19, 21, 26, 28, 29
Whitechapel, 18, 20, 22, 25, 27, 29

Circuit 40—Middlesex.
His Hon. Judge Thompson, K.C.
His Hon. Judge Higgins (Add.)
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Bow, 1, 4, 5, 6, 7, 8, 11, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29

Circuit 41—Middlesex.
His Hon. Judge Earengey, K.C.
His Hon. Judge Konstam, C.B.E., K.C. (Add.)
Clerkenwell, 1, 4, 5 (J.S.), 6, 7, 8, 11, 12 (J.S.), 13, 14, 15, 18, 19 (J.S.), 20, 21, 22, 25, 26 (J.S.), 27, 28, 29

Circuit 42—Middlesex.
His Hon. Judge Sir Hill Kelly
Bloomsbury, 4, 5, 6, 7, 8 (J.S.), 11, 12, 13, 14, 15 (J.S.), 18, 19, 20, 21, 22 (J.S.), 25, 26, 27, 28, 29 (J.S.)

Circuit 43—Middlesex.
His Hon. Judge Drysdale Woodcock, K.C.
His Hon. Judge Higgins (Add.)
Marylebone, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 44—Middlesex.
His Hon. Judge Sir Mordaunt Snagge
His Hon. Judge Dumas (Add.)
Westminster, *Daily* (*except Saturdays*)

Circuit 45—Surrey.
His Hon. Judge Haydon, K.C.
His Hon Judge Drucquer (Add.)
*Croydon, 5, 12, 13, 26, 27, 28
*Kingston, 1, 8, 15, 19, 22, 29
*Wandsworth, 4, 6, 7, 11, 14, 18, 20, 21, 25, 28, 29

Circuit 46—Middlesex.
His Hon. Judge Drucquer
Barnet, 19, 26
*Brentford, 4, 7, 11, 14, 18, 21, 25, 28
Willesden, 1, 5, 6, 8, 12, 13, 15, 20, 22, 27, 29

Circuit 47—Kent, etc.
His Hon. Judge Wells
*Greenwich, 8, 13, 15, 22, 27, 29
Southwark, 4, 5, 7, 11, 12, 14, 18, 19, 21, 25, 26, 28
Woolwich, 6, 20

Circuit 48—Surrey, etc.
His Hon. Judge
His Hon. Judge Higgins (Add.)
Dorking,
Epsom, 6, 20
*Guildford, 7, 21
Horsham, 12
Lambeth, 1, 4, 5, 8, 11, 14, 15, 18, 19, 22, 25, 26, 27, 28, 29
Redhill, 13

Circuit 49—Kent.
His Hon. Judge Clements
Ashford, 4
*Canterbury, 12
Cranbrook,
Deal, 15
*Dover, 13
Faversham, 11
Folkestone, 7
Hythe,
*Maidstone, 8
Margate, 14
†Ramsgate, 6
†*Rochester, 20, 21
Sheerness,
Sittingbourne, 19
Tenterden, 18

Circuit 50—Sussex.
His Hon. Judge Austin Jones
His Hon. Judge Archer, K.C. (Add.)
Arundel, 22
Brighton, 1, 7, 8 (J.S.), 14, 15, 21, 28, 29
†*Chichester, 13
*Eastbourne, 6, 20
*Hastings, 5, 19
Haywards Heath, 27
*Lewes, 4
Petworth, 18
Worthing, 12, 26

Circuit 51—Hampshire, etc.
His Hon. Judge Lailey, K.C.
Aldershot, 8, 9
Basingstoke, 4
Bishops Waltham, 15
Farnham, 22
*Newport, 6
Petersfield, 25
†*Portsmouth, 4 (B.), 7, 14, 28
Romsey, 1
Ryde,
†*Southampton, 5, 12, 20 (B.), 26
*Winchester, 13

Circuit 52—Wiltshire, etc.
His Hon. Judge Jenkins, K.C.
*Bath, 14 (B.), 21 (B.)
Calne,
Chippenham, 19
Devizes, 11
*Frome, 12 (B.)
Hungerford, 18
Malmesbury, 28
Marlborough,
Melksham, 22
*Newbury, 20 (R.)
*Swindon, 13, 20 (B.)
Trowbridge, 15
Warminster,
Wincanton, 22 (R.)

Circuit 53—Gloucestershire, etc.
His Hon. Judge Kennedy, K.C.
Alcester,
*Cheltenham, 12, 13 (J.S.), 26
Cirencester, 14
Dursley,
†*Gloucester, 11, 25
Newent, 29
Newnham, 18
Northleach, 30
Redditch, 15
Ross,
Stow-on-the-Wold,
Stroud, 28
Tewkesbury,
Thornbury,
Winchcombe, 27

Circuit 54—Somersetshire, etc.
His Hon. Judge
†*Bridgwater, 15
†*Bristol, 1 (B.), 11, 12, 13, 14, 18, 19, 20, 21, 22 (B.)
*Wells, 5
Weston-super-Mare, 6, 7

Circuit 55—Dorsetshire, etc.
His Hon. Judge Cave, K.C.
Andover, 6
Blandford, 27
*Bournemouth, 7 (R.), 15 (J.S.), 18, 19 (R.), 20
Bridport, 26 (R.)
Crewkerne, 12 (R.)
*Dorchester, 8
Lymington, 5
†Poole, 13
Ringwood, 28
*Salisbury, 7
Shaftesbury, 4
Swanage, 22
†Weymouth, 12
Wimborne, 21 (R.)
*Yeovil, 14

Circuit 56—Kent, etc.
His Hon. Judge Konstam, C.B.E., K.C.
Bromley, 7, 19, 26, 28
Dartford, 12, 13
East Grinstead, 5
Gravesend, 11
Sevenoaks,
Tonbridge, 14
Tunbridge Wells, 21
*Waltham Abbey, 22

Circuit 57—Devonshire, etc.
His Hon. Judge Wethered
Axminster, 18 (R.)
†*Barnstaple, 5
Bideford, 6
Chard, 19 (R.)
†*Exeter, 14, 15, 26
Honiton, 27
Langport, 8
Newton Abbot, 21
Okehampton, 22
South Molton,
Taunton, 11
Tiverton, 20
*Torquay, 12, 13, 28
Torrington, 7
Totnes,
Wellington, 20 (R.)
Williton, 19

Circuit 59—Cornwall, etc.
His Hon. Judge Lias
Bodmin,
Camelford,
Falmouth, 11 (R.)
Helston, 5
Holsworthy, 26 (R.)
Kingsbridge,
Launceston,
Liskeard, 15
Newquay,
Penzance, 6
†*Plymouth, 12, 13, 14
Redruth, 7
St. Austell, 4
Tavistock, 11
†*Truro, 8

†The Mayor's and City of London Court.
His Hon. Judge Sir Holman Gregory, K.C.
His Hon. Judge Whiteley, K.C.
His Hon. Judge Dodson
His Hon. Judge Thomas
Guildhall, 1 (J.S.), 4, 5, 6 (A.), 7, 8 (J.S.), 11, 12, 13 (A.), 14, 15, (J.S.), 18, 19, 20, 21, 22 (J.S.) 25, 26, 27, 28, 29 (J.S.)

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar's Court only
(J.S.) = Judgment Summonses
(B.) = Bankruptcy only
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

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